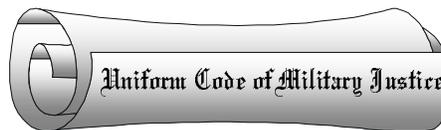
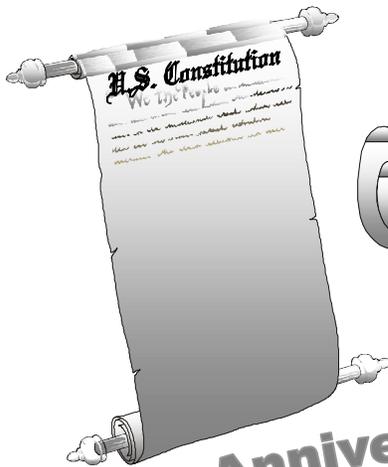


U.S. Department
of Transportation

United States
Coast Guard



50th Anniversary of the UCMJ Edition

MILITARY JUSTICE MANUAL COMDTINST M5810.1D



COMDTINST M5810.1D
17 August 2000

COMMANDANT INSTRUCTION M5810.1D

Subj: MILITARY JUSTICE MANUAL

Ref: (a) Uniform Code of Military Justice, 10 U.S.C. §§ 801 – 946 (as amended)
(b) Manual for Courts-Martial (MCM), United States (current edition)

1. **PURPOSE.** This Manual prescribes the Judge Advocate General of the Coast Guard (General Counsel, Department of Transportation) and Chief Counsel (Commandant G-L)) policies, regulations, and procedures applicable to the administration of military justice in the Coast Guard pursuant to, and in support of, references (a) and (b).
2. **ACTION.** Coast Guard personnel shall administer the Coast Guard military justice system in accordance with references (a), (b), and this Manual. Staff Judge Advocates [SJAs] and assistants (Coast Guard law specialists performing military justice duties) shall perform duties and provide military justice advice in accordance with references (a), (b), and this Manual. Convening authorities shall ensure the administration of military justice within their chain of command consistent with references (a), (b), and this Manual. General and special courts-martial convening authorities listed in section 3.A of this Manual shall make the contents of this Manual available to all individuals involved in the administration of military justice. The policies, regulations, and requirements of this Manual shall, insofar as is possible, be interpreted consistently with references (a) and (b) and control the application of the military justice system to military members of the Coast Guard except as may be otherwise provided.
3. **DIRECTIVES AFFECTED.** Military Justice Manual, COMDTINST M5810.1C, of 15 January 1991, as amended by changes 1 - 4, is cancelled.

DISTRIBUTION – SDL No. 138

	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w	x	y	z
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4. **BACKGROUND.** The Uniform Code of Military Justice [UCMJ] was first passed into law on May 5, 1950 and became effective on May 31, 1951. The UCMJ as the first unified military criminal justice system applicable to all five United States military services, has been kept current through significant legislative changes in 1968 and 1983 and frequent minor changes. Through the Manual for Courts-Martial [MCM] the President of the United States, as Commander in Chief, implements the UCMJ. The MCM similarly has undergone frequent review and change. The Coast Guard Military Justice Manual implements the Judge Advocate General of the Coast Guard [TJAG or TJAG CG], Chief Counsel, and Coast Guard policies, regulations, and procedures pursuant to the UCMJ and MCM. The UCMJ reached its 50th anniversary in May, 2000. It is only appropriate that the MJM keep pace with the flexible and dynamic system of justice applicable to the men and women of the Coast Guard. This rewrite and reorganization of the Military Justice Manual celebrates 50 years of service, innovation, and growth under the UCMJ.
5. **DISCUSSION.** As is stated in paragraph 3 to Part I, Preamble to the Manual for Courts-Martial (1998 ed.):

Military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. *The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.* [Emphasis added.]

This Manual furthers the balance reflected in the U.S. Constitution, UCMJ, and MCM to provide justice for the individual and good order and discipline in a demanding and flexible military environment. The Coast Guard military system demands this balance be successfully maintained in every venue from major metropolitan office building to rural small boat station; from men and women assigned in all 50 states, territories, and foreign shores to those deployed at sea and in the air; to personnel performing mainstream Coast Guard duties to those assigned to other military and civilian agencies, foreign and domestic; to our active duty, reserves, and retirees.

6. **PROCEDURES.** The policies, regulations, and procedures contained in this Manual are applicable to all military justice system actions taken concerning Coast Guard members subject to the UCMJ. This Manual may be cited as “Coast Guard Military Justice Manual” or, when the context is clear, as “Military Justice Manual,” or “MJM.” The signed and original version of this Manual is maintained in the Chief Counsel’s Office of Military Justice.

- a. Accurate and complete versions of this Manual will be distributed or made available to units as follows:
 - (1) To all units indicated in the next Coast Guard Directives System CD-ROM; and
 - (2) Available on the Chief Counsel's Office of Military Justice intranet site: <http://cgweb.comdt.uscg.mil/g-lmj/index.htm> and on the internet DoT web site: <http://isddc.dot.gov>, or its successor site.
- b. The Office of Military Justice intranet site will contain at a minimum:
 - (1) A web browser file that will, by default, be viewable and printable on the CG SWIII identical in substance, form, and style to the original Manual maintained on file in the Chief Counsel's Office of Military Justice. An unaltered display or printout of the browser file in its default form will be considered an accurate copy of this Manual.
 - (2) A downloadable series of word processing files optimized for viewing in "Master Document" view in Microsoft Word. Use of those files in a view other than "Master Document" view will disable most of the cross-reference, outline, and automatic table of contents and indexing features and will return error results. The word processing files are intended for use by those who need to edit and propose changes to the MJM or who may be proficient at using "Master Document" and prefer to view the Manual in that capacity. The word processing files will not be considered official versions of the Manual because of their dependence upon platform capabilities, user software configuration and settings, and the ease in which those files can be amended without it being apparent.
- c. The Coast Guard Directives System CD-ROM and DoT web site will contain a web browser file that will, by default, be viewable and printable on the CG SWIII identical in substance, form, and style to the original Manual maintained on file in the Chief Counsel's Office of Military Justice. An unaltered display or printout of the browser file in its default form will be considered an accurate copy of this Manual.
- d. Printed copies of this Manual will be mailed to all units in any SDL category who, at the time of promulgation of this Manual, do not have CGSWIII installed, do not have connection to the Coast Guard intranet, or who have been identified as having unique requirements for the printed manual (*i.e.*, the Coast Guard Academy's requirement for printed manuals for loan, reference, and use by active duty, cadet, and officer candidate students). All other units desiring all or part of this Manual in printed form shall print and reproduce their requirements locally.

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7. REQUESTS FOR CHANGES. Units and individuals may recommend changes to this Manual via the chain of command to Commandant (G-LMJ). Units and individuals may recommend Coast Guard sponsored changes to references (a) or (b) via the chain of command to Commandant (G-LMJ).
8. MAJOR CHANGES. This Manual has been extensively revised from its earlier edition in substance, organization, and form. It is current through legislative changes contained in the 1999 National Defense Authorization Act and the Manual for Courts-Martial (1998 Edition). Major changes to the prior version of this Manual are detailed in the Summary of Major Changes immediately following this promulgation letter.
9. REPORTS AND FORMS. The following reports and forms are required by the Military Justice Manual:
 - a. The following reports are required by this Manual:
 - (1) Subparagraph 1.A.4.f requires a non-Coast Guard commanding officer to forward a report of the offense and punishment awarded to a Coast Guard member to Commandant (G-LMJ) and the member's Coast Guard program manager.
 - (2) Paragraph 1.B.1 requires the completion and submission of a Report of Offense and Disposition (CG-4910) to the accused's command upon determination of an offense requiring further investigation and potential for resolution under Article 15, UCMJ.
 - (3) Subparagraph 1.B.1.d requires reporting of serious offenses as required by Criminal History Reporting for Military Suspects, COMDTINST 5580.1 (series).
 - (4) Subparagraph 1.B.1.d requires reporting of allegations of rape or sexual assault in accordance with Reporting of Rape and Sexual Assault, COMDTINST 1754.10 (series).
 - (5) Subparagraph 1.B.4.a requires an assigned investigating officer to complete and submit to the authority requiring a pre-mast investigation a completed Form CG-4910 or, in the alternative, a Report of Investigation under the Administrative Investigations Manual, COMDTINST M5830.1 (series).
 - (6) Paragraph 2.G.1 requires the Summary Court-Martial to make a report when an accused is convicted of disputed charges.
 - (7) Subparagraph 3.B.7.c addresses the circumstances where it appears Coast Guard personnel have committed several offenses, including both major federal offenses and serious but purely military offenses. Coast Guard authorities are authorized to investigate all of the suspected military offenses, and such of the civil offenses as may be practical, and to retain the accused for prosecution. Such action should be reported immediately to the Chief Counsel, the servicing legal office, and the Officer Exercising General Court-Martial Jurisdiction (OEGCMJ).

- (8) Paragraph 3.D.3 indicates when a report of investigation into misconduct is required to be forwarded to superior or alternate authority and when the other authority is required to report its action to the forwarding command.
- (9) Subparagraph 3.L.2.a provides a restriction to preclude submission of the normal investigative report to CGIS without the approval of the defense counsel in cases where a CGIS agent has been provided to detailed defense counsel to provide investigative assistance.
- (10) Subparagraph 3.L.2.c requires when a CGIS agent is assigned to assist defense counsel, upon completion of the assignment that the agent shall submit a report to the Commandant (G-O-CGIS), via the chain of command, containing an account of the investigative assistance provided, including any travel performed and expense involved. This report shall be subject to any restrictions imposed by defense counsel, and shall be subject to the defense counsel's prior review and approval if he or she so desires.
- (11) Subparagraph 3.H.1.c requires the Chief Trial Judge to forward a copy of the court-martial docket monthly to Commandant (G-LMJ).
- (12) Subparagraph 4.C.5.f requires the military judge and certified counsel who take a one time oath proscribed in paragraph 4.C.5 to transmit a signed copy to the Chief Counsel, U.S. Coast Guard. A signed copy of the oath taken by the court reporter shall be filed in his or her official service record.
- (13) Section 4.F requires detailed trial counsel to notify and file a report with Commandant (G-LMJ) when trial counsel believes a military trial judge's ruling or order is one that should be appealed.
- (14) Subparagraph 5.A.1.e(1) requires trial counsel after final adjournment of the court-martial to promptly notify the accused's commanding officer, the convening authority, and, if appropriate, the officer-in-charge of the confinement facility of the findings and sentence. A copy of the report shall be provided to detailed and other defense counsel.
- (15) Paragraph 5.A.4 prescribes the disposition of original and copies of required records of trial [ROT] prepared in accordance with section 5.A.
- (16) Paragraph 5.B.1 directs military judges to submit a letter report upon final adjournment of each court-martial.
- (17) Section 5.G prescribes the requirement for, format of, and distribution of promulgating orders for general and special courts-martial.
- (18) Section 5.I prescribes the mechanism whereby Commandant (G-LMJ) shall provide an accused with notice of the Coast Guard Court of Criminal Appeals decision once it is announced.

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- (19) Subparagraph 6.A.2.b prescribes that a suspected Article 37(a), UCMJ violation (unlawful command influence) shall promptly be reported to appropriate authorities, including the command of the suspected violator, trial counsel, military judge, or convening authority of any potentially affected military justice proceeding.
 - (20) Paragraph 6.C.1 prescribes that when detailed trial counsel after a full development and evaluation of the evidence, is of the opinion there is a lack of merit in the case to be prosecuted, and that as a matter of ethical conscience the charge(s) and specification(s) should be reduced or dismissed, he or she shall communicate in writing such belief, together with the reasons therefor, to the convening authority together with a recommendation as to the appropriate disposition of the case. The same paragraph also prescribes the report required by the convening authority if he or she does not concur with the detail trial counsel's recommendation.
 - (21) Subparagraph 6.D.2.b designates the Chief Counsel as the Officer Evaluation Report assigned supervisor, reporting officer, and reviewing officer for the Chief Trial Judge.
 - (22) Section 6.G prescribes various reports required to the Chief Counsel, and in certain cases from the Chief Counsel to The Judge Advocate General of the Coast Guard concerning personal or professional misconduct by a military trial judge, appellate judge or other attorney practicing in proceedings governed by the UCMJ and MCM that is a violation of an applicable standard of professional responsibility or calls into question the fitness of a military trial or appellate judge to perform his or her judge duties.
 - (23) Paragraph 7.B.9 requires letter reports in cases involving the requested delivery of personnel to civil authorities when: delivery is ultimately refused; extradition procedures were utilized in effecting the deliver; or the advance approval of the Chief Counsel was necessary.
 - (24) Section 7.C prescribes the application, report, and notification procedures required in requesting, executing, and reporting the results of a search pursuant to a search authorization issued by a military judge or commanding officer.
- b. The following forms are required by this Manual:
- (1) CG-4910 Report of Offense and Disposition (8/92). This form is available on Jetform Filler.
 - (2) SF-1156A Public Voucher for Fees and Mile-age of Witnesses (9/73), S/N 7540-00-634-4346.
 - (3) SF-1157 Claim for Fees and Mileage of Witness (9/73). This form is available on Jetform Filler.

- (4) DD-453 Subpoena for Civilian Witness (84 AUG), S/N 0102-LF-000-4530. This form is available on Jetform Filler.
- (5) DD-453-1 Travel Order (84 AUG), S/N 0102-LF-000-4535. This form is available on Jetform Filler.
- (6) DD-455 Report of Proceedings to Vacate Suspension (84 AUG), S/N 0102-LF-000-4550. This form is available on Jetform Filler.
- (7) DD-457 Investigating Officer's Report (84 AUG), S/N 0102-LF-000-4570. This form is available on Jetform Filler.
- (8) DD-458 Charge Sheet (84 AUG), S/N 0102-LF-000-4580. This form is available on Jetform Filler.
- (9) DD-490 Verbatim Record of Trial (1 Mar 70), S/N 0102-LF-005-1201. This form is available on Jetform Filler.
- (10) DD-491 Summarized Record of Trial (1 Apr 70), S/N 0102-LF-005-1601. This form is available on Jetform Filler.
- (11) DD-494 Court-Martial Data Sheet (Optional) (1 Jun 70), S/N 0102-LF-005-1901.
- (12) DD-2329 Record of Trial by Summary Court-Martial (84 AUG), S/N 0102-LF-002-3290. This form is available on Jetform Filler.
- (13) DD-2330 Waiver/Withdrawal of Appellate Rights- Review by Court of Military Review (84 AUG), S/N 0102-LF-002-3300. This form is available on Jetform Filler.
- (14) DD-2331 Waiver/Withdrawal of Appellate Rights-Review by Judge Advocate General (84 AUG), S/N 0102-LF-002-3310. This form is available on Jetform Filler.
- (15) NAVPERS 1640/4 Confinement Order (Rev 4-98). This form is available on Jetform Filler.
- (16) DD-2704 Victim-Witness Certification and Election Concerning Inmate Status. This form is required by Naval Brigs when accepting a confinee. A blank form is included in enclosure (14f). It may be locally reproduced.



CHIEF COUNSEL

17 August 2000
COMDTINST M5810.1D

SUMMARY OF CHANGES

A. General

This version of the Military Justice Manual, COMDTINST M5810.1D has been substantially revised, reorganized, and updated. In addition to substantive changes required by changes in the law and regulations since the last change to the prior version, this Manual has a new look and organization, more helpful aids to the unit commander and practitioner, and, most importantly, improved and expanded guidance to assist those involved in the practice of military justice within the Coast Guard. The information relied on in the past is still in the Manual; it just might be in a different section or chapter. Changes in policy are noted below with a summary of all major changes.

1. Reorganization

a. This Manual is organized into 7 chapters following an administrative and criminal chronological progression as follows:

Ch #	This Manual's Organization	... and includes from the prior Manual's Organization
1	Nonjudicial Punishment	Nonjudicial Punishment (prior Chapter 1)
2	Summary Courts-Martial	Summary Courts-Martial (prior Chapter 10)
3	Pretrial Matters	Pretrial Matters (prior Chapter 2) and most of Personnel of Courts (prior Chapter 3)
4	Trial Matters	Trial Matters (prior Chapter 4)
5	Post Trial Matters	Post Trial Matters (prior Chapter 5)
6	Court-Martial Miscellaneous	Court-Martial Miscellaneous (prior Ch 6) & some of Personnel of Courts (part of old Ch 3)
7	Military Justice Miscellaneous	Military Justice Miscellaneous (prior Chapters 7, 8, & 9)

b. Chapters 1 through 5 follow the progression of disciplinary options available to a commanding officer (administrative measures are in chapter 1 along with

NJP). Chapters 6 and 7 contain additional information supporting the court-martial practice as well as the practice of military justice in general.

c. For the purposes of organization and cross-referencing, this Manual is divided and numbered into:

- (1) Chapters (example: chapter 2);
- (2) Sections (example: section 2.A.);
- (3) Paragraphs (example: paragraph 2.A.4.); and
- (4) Subparagraphs (examples: subparagraph 2.A.4.c., 2.A.4.c.(1), 2.A.4.c.(1)(a), 2.A.4.c.(1)(a)i., etc.).

2. Intranet access

The Manual has been formatted for electronic reference and searching and will be accessible on the Commandant (G-LMJ) intranet web page as both a downloadable electronic word processing file and as an Adobe Acrobat web document. To the extent that it does not change the substance or organization of this Manual additional electronic features will be included in the web page documents as they are implemented (*i.e.*, automatic cross-referencing; links, etc.).

3. New or Improved Practice Aids

Numerous practice aids have been incorporated into this Manual. The mast script (enclosures (1b) and (1c)) has been revised, expanded to include both a detailed and abbreviated version, and improved to reflect the improvements to Chapter 1. A vacation hearing script (enclosure (7a)), Article 32 guide (enclosure (12)), Media Guide (enclosure (15)), Victim-Witness Program forms (enclosure (14f)), and sample pretrial agreement (enclosure (16f)) are among the new materials provided to improve our military justice practice. Of note, the Media Guide contains information about the military justice system and courts-martial that will be as helpful to the unit training officer as the unit public affairs officer.

4. Improved Tables of Content, Index, Definition and Abbreviation Sections

Improved supplementary sections of the Manual such as summary and detailed Tables of Content; Index; Definition and Abbreviation Sections; and extensive cross-referencing within the Manual should assist finding materials. [*See*, Table of Contents and Appendices 1 and 2.]

5. Terminology

This Manual has been revised to provide terminology consistency. A definition section was added to explain and distinguish legal terms of art (*e.g.* “law specialist,” “military attorney,” and “civilian counsel” are not interchangeable; a “member” facing mast is still a member; a member against whom charges have been preferred is an accused; “SJA” and “servicing legal officer” usually refer to the same person; etc.).

B. Summary of Changes

This is a summary and not an exhaustive list of changes to the Manual. Policy changes are highlighted in *italic* type. The summary follows the new Table of Contents (with reference to new sections or paragraphs in the new version, if applicable).

1. Chapter 1 - Nonjudicial Punishment

- a. The chapter on nonjudicial punishment has been reorganized as follows:
 - A. General
 - B. Preliminary Actions
 - C. Member Representation at NJP
 - D. NJP Procedure
 - E. Punishment at NJP
 - F. Appeal of NJP
 - G. Administrative Matters Related to NJP
 - H. NJP Without a Hearing
- b. The word “accused” has been replaced with the word “member” for all references to the subject of the nonjudicial punishment; the same substitution was made to the mast scripts, enclosures (1b) and (1c).
- c. Paragraph 1.B.1. (Report of Offenses): Clarifies the circumstances under which commands receive reports of misconduct and who may initiate a CG-4910.
- d. Paragraph 1.B.3. (Initial Action): *Allows assigned persons other than the executive officer to do the ministerial tasks associated with processing the CG-4910 during initial review and final review.*
- e. Paragraph 1.B.4. (Preliminary Inquiry Officer): Provides more guidance on duties and responsibilities of the PIO.
 - (1) Subparagraph 1.B.4.e. (Rights Warning): Recognizes that when a PIO is appointed, the member facing the allegations is typically suspected of committing

an offense; therefore the PIO shall inform the member, using Enclosure (5), of the member's rights under Article 31(b), UCMJ prior to questioning the member.

(2) Subparagraph 1.B.4.i. (Member's Opportunity to Inspect Documents and Evidence): Provides the PIO, at the command's discretion, should, before mast, allow the member the opportunity to inspect documents and evidence to be considered by the commanding officer in deciding whether and how much nonjudicial punishment to impose. Such a procedure minimizes the disruption of the mast procedure (the scripts in Enclosures (1b) and (1c) have been updated to include an inquiry from the commanding officer asking the member whether he or she has had such an opportunity to inspect the documents and evidence).

f. Paragraph 1.C.3. (Mast Representative): Discusses the role of the mast representative at mast, the selection of the mast representative, and provides additional guidance for those circumstances in which the member declines a mast representative.

g. Paragraph 1.C.4. (Spokesperson): *Based on the requirements of paragraph 4.c.(1)(b), Part V, MCM, the Manual now provides that a spokesperson may appear with a member at NJP in lieu of a mast representative. A spokesperson is simply an individual selected and arranged for by the member who, at the member's election, speaks for him or her at those times during the mast when the member's responses are invited by the commanding officer. The mast need not be delayed to permit the presence of a spokesperson..*

h. Paragraph 1.D.1. (NJP Procedures – General):

(1) Subparagraph 1.D.1.c. (Special Arrangement for Member at a Detached Unit): Allows two-way videoconference to accomplish appearance of member at mast where member unit detached from mast authority.

(2) Subparagraph 1.D.1.e. (Proceedings Open to the Public): States that mast is normally open to the public, per Part V, MCM, and may be closed only if it involves classified information, due to operational necessity, or other good cause.

(3) Subparagraph 1.D.1.f. (Burden of Proof): States that burden of proof at NJP is preponderance of the evidence.

i. Paragraph 1.D.9. (Dismissing Unsupported Allegations): Expressly permits the mast authority to dismiss any unproven offenses before the member presents evidence.

j. Paragraph 1.D.13. (Consideration of Prior Documented Performance): States mast authority should review member's PDR and consider member's prior performance in deciding whether to impose NJP and, if so, how much punishment is appropriate.

k. Paragraph 1.D.15 (Findings) requires the mast authority to inform the member what offenses the mast authority believes the member committed before awarding NJP.

1. Paragraph 1.D.16 (Vacation of Earlier Suspended Punishment) Incorporates vacation of earlier suspended punishment into mast script.

m. Paragraph 1.D.22. (Publication): Discusses means of publishing NJP results to unit.

n. Paragraph 1.E.3. (Effective Date of Punishment):

(1) Subparagraph 1.E.3.a.(2) (General): Allows commanding officers of vessels broader discretion to determine commencement of restriction.

(2) Subparagraphs to 1.E.3.b. (Transfer of Member): Provides additional circumstances under which a member transferred while serving punishment imposed at NJP will continue serving that punishment at the new unit.

o. Paragraph 1.E.4. (Suspension of Punishment):

(1) Subparagraphs to 1.E.4.c. (Transfer of Member): Provides additional circumstances under which a member transferred while subject to a suspended punishment imposed at NJP will continue to be subject to the suspended punishment at the new unit.

p. Paragraph 1.E.5. (Vacation of Suspension):

(1) Subparagraph 1.E.5.c. (Vacation Proceedings): Provides that new enclosure (7a) is available as a script for a hearing regarding vacation of punishment imposed at NJP.

q. Paragraph 1.G.1. (Administrative Measures Independent of Article 15, UCMJ):

(1) Subparagraph 1.G.1.b. (Extra Military Instruction): Expands discussion of EMI.

2. Chapter 2- Summary Courts-Martial

No major changes were made to Chapter 2.

3. Chapter 3 - Pretrial Matters

a. Paragraph 3.A.3. (Areas of Responsibility):

(1) Subparagraph 3.A.3.b(3) (Non-Coast Guard Commands): Provides the MLC commanders with primary jurisdiction over members returned to Coast Guard for disciplinary reasons from duty with joint commands.

b. Paragraph 3.B.3. (Jurisdiction Limitations Under Articles 2 and 3, UCMJ):

(1) Subparagraph 3.B.3.b. (Public Health Service Members): Addresses disciplinary proceedings involving Public Health Service personnel assigned to duty and serving with the Coast Guard.

c. Paragraph 3.C.1. (Pretrial Restraint and Confinement; General): Provides more in-depth guidance regarding imposition of pretrial restraint and confinement (from RCM 304 and 305).

d. Paragraph 3.C.3. (Commanding Officer's Review of Pretrial Confinement):

(1) Subparagraph 3.C.3.b. (Single Determination): Clarifies that a commanding officer may make the 48-hour probable cause determination and submit his or her 72-hour review memorandum even though he or she ordered the initial confinement so long as he or she remains neutral and detached regarding the case.

e. Paragraph 3.C.4. (Review of Pretrial Confinement by Initial Review Officer):

(1) Subparagraph 3.C.4.c. (Using the DOD Confinement Facility IRO): Clarifies that the brig-designated IRO review may fulfill the requirement for a Coast Guard review of pretrial confinement.

f. Paragraph 3.D.2. (Forwarding of Charges):

(1) Subparagraph 3.D.2.c. (Forwarding with Disposition Recommendation): Clarifies that commanding officer may always forward draft charges to superior commanding officer with a recommendation for disposition.

g. Paragraph 3.F.5. (Procedure): Notes that enclosure (12) includes a new Article 32 guide and script that will be maintained on the G-LMJ web page.

h. Paragraph 3.F.6. (Claims of Privilege at Investigations):

(1) Subparagraph 3.F.6.b. (Mishap Investigations): Clarifies the requirement that Commandant (G-LMJ) and (G-WK) shall be contacted prior to any release of privileged mishap information or assertion of a privilege under MRE 506 or 507 at an Article 32 investigation.

i. Paragraph 3.F.7. (Use of Investigative Material): Clarifies that Article 32 investigating officer may review CGIS ROI or PIO report in order to assist in making determinations regarding witness and evidence issues before the hearing.

j. Paragraph 3.H.2. (Detailing Certified Defense Counsel to Special and General Courts-Martial): Defers to existing procedures in MLC Atlantic and Pacific regarding detail of defense counsel.

k. Paragraph 3.H.3. (Obtaining Individual Military Counsel):

(1) Subparagraph 3.H.3.b(2)(a) (existing attorney-client relationship): *Requires “existing” attorney-client relationship to qualify as an exception to categorical determination of non-availability. An attorney-client relationship exists between the accused and requested counsel when it has been properly authorized by the responsible authority, the requested counsel and the accused have had a privileged conversation relating to a charge pending before a proceeding (GCM, SPCM, Article 32 investigation), and the requested counsel has engaged in active pretrial preparation and strategy with regard to that charge.*

(2) Subparagraph 3.H.3.b(2)(b) (Defined): Defines attorney-client relationship for purpose of qualifying as an exception to categorical determination of non-availability.

l. Paragraph 3.H.5.f. (Bailiffs and Court-Security Personnel): *Requires trial counsel to brief bailiff on bailiff duties and assigns trial counsel the responsibility to make an initial security assessment.*

m. Paragraph 3.J.1. (General): References enclosure (16f), a model pretrial agreement that may be adopted for use in Coast Guard courts-martial.

(1) Subparagraph 3.J.2.e. (Deferral or Waiver of Automatic Forfeitures): Alerts negotiators to possibility that member may enter a no pay status during confinement and to keep this in mind when negotiating PTA terms, especially with respect to deferral or waiver of administrative forfeitures under Article 58b, UCMJ.

n. Paragraph 3.M.4. (Keeping the Victim Informed): References enclosure (14f), Victim-Witness Assistance Program forms available to distribute to victims and witnesses during investigations and court-martial proceedings and the mandatory VWAP form for post trial confinees.

o. Section 3.N. (Witness Fees and Payment): Establishes updated procedures for submitting civilian witness travel claims and obtaining advances for subpoenaed witnesses.

4. Chapter 4 - Trial Matters

a. Section 4.B. (Spectators and Release of Information at Trial): References enclosure (15), the U.S. Coast Guard Media Relations in High-Visibility Court-Martial Cases -- A Practical Guide; a guide to the military justice system; written with a minimum of legalese; useful as a training tool as well as its intended public affairs purposes.

5. Chapter 5 - Post Trial Matters

a. Paragraph 5.A.1. (General and Special Courts-Martial): Acknowledges that verbatim records of trial are the norm and summarized records of trial will only be prepared with the concurrence of the SJA and military judge presiding over the case.

(1) Subparagraph 5.A.1.c. (Acquittals and Findings of Not Guilty): Reflects need to prepare limited record of proceedings in cases in which the member is found not guilty by lack of mental responsibility.

(2) Subparagraph 5.A.2.e. (Exhibits): Details record of trial requirements for exhibits.

(3) Subparagraph 5.A.2.f. (General Instructions): Provides updated general instructions regarding the preparation of the record of trial.

b. Paragraph 5.C.5. (Appointment of Appellate Defense Counsel): Articulates current practice of appointing appellate defense counsel to all members convicted whose cases will receive Article 66, UCMJ review.

c. Paragraph 5.C.6. (Appointment of Counsel for Members Sentenced to Death by GCM): Provides for appointment of counsel for members sentenced to death for filing of post-conviction *habeas corpus* petition.

d. Paragraph 5.D.5. (Forfeitures, Reductions in Pay Grade, and Automatic Provisions):

(1) Subparagraph 5.D.5.b. (Statutory Administrative Forfeitures): Provides additional guidance on treatment of administrative forfeitures. Announces that total approved adjudged forfeitures and fines in combination with administrative forfeitures may not exceed jurisdictional punishment cap on court-martial forum.

e. Paragraph 5.G.5. (Promulgating Order Numbering): Articulates current practice of sequential numbering of promulgating and supplementary orders.

6. Chapter 6 - Court-Martial Miscellaneous Matters

a. Section 6.E. (Tenure for Military Trial and Appellate Judges): *Provides limited tenure for military trial and appellate judges.*

b. Section 6.G. (*Professional Supervision of Military Trial and Appellate Judges and Attorneys Practicing in Proceedings Governed by the UCMJ and MCM*): *Incorporates the requirements of RCM 109 into judge and counsel professional disciplinary procedures.*

c. Section 6.J. (Submitting Proposed Changes to the Manual for Courts-Martial (MCM)): Sets forth the role of the Coast Guard in the JSC and informs the Coast Guard legal community of the process by which the JSC proposed changes to the MCM for the President's approval.

7. Chapter 7 - Military Justice Miscellaneous Matters

a. Section 7.C. (Search Authorizations): Provides updated guidance for obtaining search authorizations from a military judge or commanding officer. *Written affidavits may be used in lieu of verbatim transcripts.*

8. Enclosures

Encl (1) **Mast Scripts:** The mast script has been expanded to include instructions, a detailed script and an abbreviated script, and a table of maximum punishments and limitations. Updated to incorporate changes to Chapter 1 including the role of the spokesperson, inquiring if member had adequate time to prepare for mast, dismissing allegations inadequately supported by evidence before taking member's statement, and hearing from member's witnesses or from the department head, command master chief, executive officer, etc. Incorporates vacation proceedings of a prior suspended punishment.

Encl (5) **Article 31(b) Rights Acknowledgement and Waiver:** Improved form; more useful to investigator and suspect.

Encl (6b) **Letter of Admonishment/Reprimand:** Moved format for letter of admonishment or reprimand from old Chapter 1.

Encl (7a) **Suggested Vacation Script:** New instructions and suggested script to follow to vacate a prior suspended punishment under Article 15, UCMJ or Summary Court-Martial.

Encl (12) **Article 32, UCMJ Guide and Script:** Instructions, script, sample letters and report, and blank report to assist counsel assigned to an Article 32, UCMJ pretrial investigation.

Encl (14f) **Victim-Witness Assistance Program Forms:** Forms for distribution to victims and witnesses during investigations and court-martial proceedings; also includes the mandatory VWAP form for post trial confinees.

Encl (15) **U.S. Coast Guard Media Relations in High-Visibility Court-Martial Cases: A Practical Guide:** Non-lawyer guide to the military justice system; written without legalese; useful as a training tool as well as for its intended public affairs purposes.

Encl (16f) **Sample Pretrial Agreement:** A pretrial agreement with common provisions that may be adopted for use in Coast Guard courts-martial.

Encl (26) **Military Judge Certification Request:** Format for request removed from body of MJM.

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1. NONJUDICIAL PUNISHMENT [NJP]

1.A. GENERAL

1.A.1. Authority

Article 15, Uniform Code of Military Justice [UCMJ], provides commanding officers with the authority to impose punishment without resort to the judicial forum of a court-martial. Part V, Manual for Courts-Martial [MCM], supplements Article 15, UCMJ and provides procedural guidance.

1.A.2. Purpose

1.A.2.a. Maintenance of Discipline

Each commanding officer is responsible for the maintenance of discipline within his or her command. In the great majority of cases, discipline can be maintained through effective leadership, including, when required, the use of available administrative measures. [See, paragraph 1.G.1 below.] Allegations of offenses should be disposed of in a timely manner at the lowest appropriate level of disposition. When a minor offense has been committed and lesser administrative measures are considered insufficient to meet the needs of good order and discipline, a commanding officer should consider invoking his or her authority under Article 15, UCMJ to impose NJP. This disposition decision rests within the sound discretion of the commanding officer and shall be made on an individual basis considering the nature of the offense(s), any mitigating or extenuating circumstances, the member's character and military service, any recommendations made by subordinate commanding officers, the interest of justice, military exigencies, and the effect of the decision on the member and the command.

1.A.2.b. Rehabilitation

NJP has an important rehabilitative component. It not only provides a commanding officer with an essential and prompt means of maintaining good order and discipline, but may also promote positive behavioral changes.

1.A.3. Persons Authorized to Impose NJP

1.A.3.a. Commanding Officers and Officers-in-charge of Coast Guard Units

All commanding officers may impose NJP upon personnel assigned to their units. All officers-in-charge may impose NJP upon enlisted members assigned to their unit, unless their authority is limited by an officer exercising general court-martial jurisdiction [OEGCMJ]. Throughout this chapter, references to commanding officers as NJP or mast authorities include officers-in-charge, except where specifically noted. The authority of a commanding officer to impose NJP for certain types of offenses, certain categories of members, in specific cases, or to impose certain types of punishment may be limited or withheld by a superior commanding officer or the Secretary concerned. A Coast Guard unit is a separately identified Coast Guard organizational entity, under a duly assigned commanding officer or officer-in-charge, provided with personnel and material for the performance of a prescribed mission.

1.A.3.b. Commanding Officers of Enlisted or Military Personnel

Organizational entities established and headed by a commanding officer of enlisted or military personnel pursuant to Section 3-2-5, Coast Guard Regulations, COMDTINST M5000.3 (series), are Coast Guard units for the purpose of this chapter.

1.A.3.c. Successor in Command

The power to impose NJP is inherent in the office and not in the individual. Any officer who succeeds to command in the absence of the assigned commanding officer because of death, incapacitation, illness, TAD, or leave has the power of the assigned commanding officer to impose punishment, but the maximum punishment is limited by the rank of the successor. For example, a LT who succeeds to command in the absence of the assigned commanding officer who is a LCDR, may impose the amount of punishment allowed a commanding officer in the grade of LT or below.

1.A.3.d. Principal Assistant

Any officer of flag rank in command may delegate his or her powers under Article 15, UCMJ to a "principal assistant." A "principal assistant" includes any O-5, O-6, or flag officer on the flag officer in command's staff. The officer to whom such powers are delegated shall have the same authority as the officer who delegated the powers (unless the delegation was otherwise limited). Maximum limitations on punishments will be determined by the grade of the officer delegating this authority.

1.A.3.e. Superior Commanding Officer

In some cases, the member's commanding officer may refer a matter to the next superior officer in the chain of command for disposition. Although a commanding officer is not disqualified from imposing NJP because of a personal interest or involvement in the case, he or she may desire to forward the matter to maintain the appearance of fairness. Forwarding a matter may also be appropriate when the appropriate punishment may be beyond the limits of the commanding officer's NJP authority. If the commanding officer

decides to refer the offense to the next superior officer, he or she shall forward all pertinent documents, including the Form CG-4910, any written statements, a brief explanation of the reasons for referring the matter, and a recommendation for disposition. [*See*, RCM 306(c)(5).]

1.A.3.f. Subsequent Commanding Officer

If the member is transferred to a new unit after an alleged offense is committed, but before NJP is imposed, all information concerning the alleged offense should be referred for appropriate action to the commanding officer of the member's new unit or a competent authority in the member's new chain of command.

1.A.4. Persons Subject to NJP

1.A.4.a. Military Members of the Command

At the time NJP is imposed, the member being punished must be a member of the command of the commanding officer who imposes the punishment. A member is "of the command" if he or she is assigned or attached thereto. A member may be "of the command" of more than one command at the same time, such as members assigned or attached to commands or units for the purpose of performing temporary additional duty (TAD). A member assigned to a Headquarters, Area, District, or MLC unit with a designated commanding officer or officer-in-charge is not "of the command" of a commanding officer of enlisted or military personnel for the Headquarters, Area, District or MLC staff.

1.A.4.b. TAD Personnel

NJP may be imposed upon TAD personnel by the commanding officer of the member's permanent unit, or by the commanding officer of the unit to which the member is temporarily assigned. Because a member may not be punished by both commanding officers for the same offense, it is desirable, if circumstances permit, for the respective commanding officers to confer and reach agreement as to which one will exercise NJP authority. A member should not be assigned TAD from a shore unit to a vessel for the primary purpose of thwarting the member's right to demand trial by court-martial in lieu of NJP.

1.A.4.c. Reservists

A member of the Reserve is subject to the UCMJ while performing Inactive Duty for Training [IDT], Active Duty for Training [ADT], or active duty. Accordingly, all offenses committed by a reservist while on active duty, IDT or ADT may subject the reservist to discipline, including NJP. Reservists performing active duty or inactive duty training with an active service unit are considered under that augmented unit's control in the same manner as TAD personnel. [*See*, Chapter 3, Reserve Policy Manual, COMDTINST M1001.28 (series).]

1.A.4.d. Civilians

Civilians are never subject to NJP.

1.A.4.e. Members of Other Armed Forces Serving with the Coast Guard

There is no legal prohibition against a Coast Guard commanding officer exercising NJP authority over a member of another armed force attached to his or her command. Exercise of NJP authority by an appropriate officer within the member's armed force is usually preferable, however, because of the differing regulations and administrative procedures among the armed forces. Any exercise of NJP over a member of another armed force is subject to the member's service regulations, applicable directives and inter-service agreements. Such documents, and the servicing legal office, should be consulted if imposition of NJP on members of other services is contemplated. The member's service regulations shall govern the rights and procedures for imposition of NJP.

1.A.4.f. Members of the Coast Guard Serving with Other Armed Forces

Before an officer in another Armed Force imposes NJP on a Coast Guard member under his or her command, that commanding officer should review applicable agreements and directives and determine if the Coast Guard member should be permanently or temporarily reassigned to a Coast Guard command. If the commanding officer decides to impose NJP, the member shall be afforded all rights provided under this Manual. Following the imposition of NJP, the commanding officer shall forward a report of the offense and punishment awarded to Commandant (G-LMJ) and the member's Coast Guard program manager. A commanding officer of another armed force with multiple Coast Guard members assigned may also request that a Coast Guard officer assigned to that command be designated as commanding officer, Coast Guard Military Personnel in accordance with Section 3-2-5, Coast Guard Regulations, COMDTINST M5000.3 (series).

1.A.4.g. Retirees

A retiree may not be recalled to active duty solely for the imposition of NJP.

1.A.5. Offenses For Which NJP May Be Imposed

1.A.5.a. Minor Offenses

NJP may be imposed for minor offenses made punishable by the UCMJ as defined in Part IV, MCM. Factors to be considered to determine whether an offense is minor: the nature of the offense and the circumstances surrounding its commission; the offender's age, rank, duty assignment, record and experience; and the maximum sentence permitted for the offense if tried by general court-martial [*see*, paragraph 1.e., Part V, MCM]. Ordinarily, an offense should be considered minor if the maximum sentence that could be awarded at a general court-martial does not include a dishonorable discharge or confinement for more than 1 year. This general rule, however, does not prohibit imposing nonjudicial punishment for offenses that do not meet the definition of "minor" in this subparagraph. Questions whether an alleged offense is minor can be directed to the servicing legal office.

1.A.5.b. Determining That An Offense Was Committed

A commanding officer must find the member committed a criminal offense, as defined under the UCMJ and the MCM, before he or she may impose NJP. Many Coast Guard policies are not enforceable as punitive orders, so not every failure to follow Coast Guard policy may be the basis for NJP. Because NJP is nonjudicial, the commanding officer should not announce that the member is “guilty” if he or she determines that the member committed a criminal offense, but instead, should announce that an offense has been committed and, if appropriate, announce the punishment that is appropriate and authorized under Article 15, UCMJ [*see*, subparagraph 1.D.19 below.].

1.A.6. Punishment

1.A.6.a. Nonjudicial in Nature

Punishment imposed under Article 15, UCMJ is called “Nonjudicial Punishment” to distinguish it from punishment imposed by court-martial, which is “judicial punishment.” Nonjudicial punishment may also be referred to as “NJP,” “Captain’s Mast,” “Mast,” or “Article 15 Punishment.” A commanding officer’s decision to impose NJP does not constitute a judicial finding of guilt and is not a “conviction.” A member does not have a “criminal record” as a result of the imposition of NJP. This distinction preserves a member’s record from the stigma of conviction while still giving a commanding officer a prompt and efficient tool to maintain good order and discipline at the unit. It is equally important to note that while NJP is an administrative process, as opposed to a criminal process, in order to punish an individual under Article 15, UCMJ the mast authority must determine that the member committed an offense (or crime) as defined by the UCMJ.

1.A.6.b. Imposition of Punishment

Once a commanding officer finds that an offense was committed, he or she must consider the appropriate punishment. The following factors should be considered by the commanding officer in choosing the appropriate punishment:

- (1) Seriousness of the offense;
- (2) Circumstances surrounding the offense;
- (3) Member’s prior performance and potential;
- (4) Potential rehabilitative effect of punishment on the particular member;
- (5) Mitigating and extenuating circumstances;
- (6) Effect of offense upon the good order and discipline within command;
- (7) Beneficial effect of immediate punishment;
- (8) Deterrent effect of punishment on potential offenders;
- (9) Recommendations from any subordinate commanders; and,

- (10) Potential adverse administrative consequences (*e.g.*, loss of eligibility for good conduct award; eligibility for reenlistment or promotion; show cause board; administrative discharge).

The maximum authorized NJP punishments are based on the rank of the commanding officer, the rank or pay grade of the member being punished, and, in the case of minor unauthorized absences under Article 86, UCMJ, the maximum punishment authorized to be imposed under that offense.

1.A.6.c. Suspension of Punishment

When imposing NJP, the commanding officer should also consider whether to suspend all or part of the punishment imposed. Suspension of punishment may be especially appropriate when it is the member's first offense or where there are extenuating or mitigating circumstances. Suspension provides the member with an additional incentive for proper behavior.

1.A.7. Limitations on the Exercise of NJP

1.A.7.a. Multiple Offenses

All known offenses determined to be appropriate for disposition by NJP and ready to be considered at the time, including all such offenses arising from a single incident or course of conduct, shall be considered together at a single mast. They shall not be made the basis for multiple punishments. If one or more offenses are determined to be appropriate for trial by courts-martial, NJP should not be imposed and all pending charges should be referred for trial. Charges and offenses may not be split for adjudication without conferring with the command's servicing legal office. A commanding officer is not required to delay NJP to complete an investigation into unrelated conduct.

1.A.7.b. Increased or Double Punishment

After NJP is imposed, the amount of punishment may not be increased on appeal or for any other reason, nor may NJP be imposed again for the same offense(s). Misconduct punished at NJP may, in rare circumstances, subsequently form the basis for charges at court-martial. [*See*, section 1.I below; paragraph 1.e., Part V, MCM.]

1.A.7.c. Civil Offenses

NJP may not be imposed for an offense prosecuted in a United States federal court. As a matter of Coast Guard policy, Commandant (G-L) authorization must be obtained before NJP may be imposed for an offense pending trial or tried by a state or foreign criminal court. "Pending trial" means that state or foreign government has issued an indictment or information or has taken similar steps toward prosecution. Requests for such authorization must be in writing and provide a thorough justification why NJP should be authorized. [*See*, paragraph 3.B.4 below.]

1.A.7.d. Offenses Previously Tried by Court-Martial

NJP may not be imposed for an offense previously tried by court-martial and resulting in a finding of guilty or not guilty.

1.B. PRELIMINARY ACTIONS

1.B.1. Report of Offense

1.B.1.a. Initial Report

A command may receive an allegation of misconduct from any source. Another member of the command may inform a superior that he or she witnessed an act of misconduct, the command may receive a report from another command or local authorities, or a member of the public may report an offense. Any report of misconduct may serve as the basis for initiating a preliminary inquiry [*see*, subparagraph 1.B.3.c below].

1.B.1.b. Report of Offense and Disposition [CG-4910]

Completion of a Report of Offense and Disposition (CG-4910) (often called a “booking” or “report” chit) is often the first step in the NJP process. Completion of a CG-4910 is not required to initiate a preliminary inquiry [*see*, subparagraph 1.B.3.c below]. Form CG-4910 provides a step-by-step approach to document the actions taken by the command. A copy of a completed CG-4910 is provided in enclosure (2a). This form is available on the standard workstation, or the blank copy provided in enclosure (2b) may be reproduced locally. Once the member has been placed on report, the procedure to be followed may vary with the size and type of unit and the desires of the commanding officer.

1.B.1.c. Persons Authorized to Submit a CG-4910

Any member of the armed forces who is aware of an offense may submit a CG-4910. The person submitting the CG-4910 may rely upon information received from other sources and does not have to have personally witnessed the alleged act of misconduct.

1.B.1.d. Allegations of Serious Misconduct

If the allegation of misconduct involves a serious offense of the type not normally disposed of through nonjudicial punishment, a CG-4910 should not be completed. The command should consult its servicing legal office to determine if an offense should be considered serious. If necessary, the command should request investigative assistance from the regional Coast Guard Investigative Service office in accordance with Investigative Assistance, COMDTINST 5520.5 (series),. Serious offenses must also be reported as required by Criminal History Reporting for Military Suspects, COMDTINST 5580.1 (series),. Allegations of rape or sexual assault must be reported in accordance with Reporting of Rape and Sexual Assault, COMDTINST 1754.10 (series).

1.B.2. Predisposition Restraint

Pre-mast confinement or restriction is not authorized. A member may be placed in pre-trial restraint only if the command is considering referring the charges against the member for trial by special or general court-martial. A command may not automatically place a member in restraint solely because he or she has been placed on report. Pretrial restraint, including pretrial restriction or confinement, may be imposed only in very limited circumstances [*see*, RCM 304 and 305]. Generally, pretrial restraint may be imposed only if necessary to ensure an accused's presence at trial or to prevent the commission of additional serious offenses. The member must be immediately released from restraint if the command decides to dispose of the offense(s) other than at court-martial.

1.B.3. Initial Action

1.B.3.a. Review of CG-4910

The CG-4910 should be forwarded for review. Normally, it is reviewed by the executive officer (and will be discussed using that title throughout this section), but, depending on the command's organization, this function (as well as the final review, *see* paragraph 1.B.5 below) may also be performed by the command's chief of military personnel, administrative officer, or any officer or petty officer designated by the commanding officer. If designated, a civilian employee in a supervisory position may also perform this ministerial function. If the CG-4910 involves a serious offense of the type for which nonjudicial punishment is not normally imposed, action should be taken as discussed in subparagraph 1.B.1.d above. If the executive officer determines that nonjudicial punishment may be appropriate, he or she should advise the member of the general nature of the offense that he or she is suspected of committing and that the command is considering imposition of nonjudicial punishment. The executive officer should designate a preliminary inquiry officer to conduct a preliminary inquiry. If appropriate, the executive officer may dismiss the matter, if delegated this authority by the commanding officer.

1.B.3.b. Appointment of Mast Representative

Depending on the circumstances, a command may desire to appoint a mast representative, described in paragraph 1.C.3 below, at one of two stages during the preliminary actions. One option is to appoint the mast representative prior to or simultaneously with forwarding the CG-4910 to the PIO. Alternatively, a mast representative may be appointed during the final review [*see*, subparagraph 1.B.5.d below].

1.B.3.c. Designation of Preliminary Inquiry Officer [PIO]

The executive officer normally designates a member of the command to conduct a preliminary inquiry. The designation may be made orally or in writing.

1.B.4. Preliminary Inquiry Officer [PIO]

1.B.4.a. PIO Duties

(1) The PIO shall become familiar with this entire paragraph [paragraph 1.B.4 above.].

(2) The PIO shall ensure the section of the CG-4910 entitled “Information Concerning Accused” is properly completed.

(3) The PIO shall review the description of each of the suspected offenses in Part IV, MCM, and address each of the listed elements during the inquiry.

(4) The PIO shall question any witnesses and collect any documents (log entries, receipts, etc.), statements, or other evidence of the suspected offense(s). The PIO should obtain a signed written statement from each witness who has information about the alleged offense(s). If a witness refuses to provide a written statement, the PIO should prepare a summary of the interview. It is usually recommended that the PIO not question the suspect until after collecting available evidence and questioning other witnesses. By doing so, the PIO is better prepared to interview the suspect, formulate questions, confront issues in contention and ascertain the suspect’s credibility.

(5) The PIO shall correct the CG-4910 as necessary to ensure the Details of Offenses are supported by evidence. A copy of any amended CG-4910 shall be provided to the member.

(6) At the conclusion of the preliminary inquiry, the PIO shall complete the section of the CG-4910 entitled “Preliminary Inquiry Officer’s Report” and return the form and any supporting materials obtained during the inquiry to the executive officer. The report shall include the PIO’s summarization as to what, in his or her opinion, actually occurred along with a recommendation as to the appropriate disposition of the matter [*see*, subparagraph 1.B.4.c below]. Though it is not required, a PIO may wish to use the Sample Report of Investigation format, found in the Administrative Investigations Manual, COMDTINST M5830.1 (series), to report his or her findings, opinions, and recommendations.

(7) The PIO may conduct portions of the inquiry remotely, though in most circumstances, an on-site investigation yields superior results. If the inquiry is conducted remotely, the PIO must take extra care when advising a member of the alleged offenses, providing a rights warning and obtaining a waiver and statement from the member.

1.B.4.b. Offense(s) Previously Investigated

If the alleged offenses are the subject of a CGIS Report of Investigation or administrative investigation report, the PIO should review that report. The PIO should conduct an additional investigation only if he or she believes that additional information is needed before making a recommendation for disposition.

1.B.4.c. New or Different Offense(s)

If during the course of the inquiry, the PIO becomes aware of a new or different offense(s) that may have been committed by the member, the PIO should inquire into the new or different offense(s). The PIO should make a recommendation concerning the disposition of the new or different offense(s).

1.B.4.d. Suspected Serious or Significant Offenses

If the preliminary inquiry reveals at any time that a criminal investigation as discussed in subparagraph 1.B.1.d above, may be appropriate, the PIO should stop the inquiry and request further guidance from the authority ordering the investigation. Ordinarily, there is no reason to continue the PIO inquiry if a criminal investigation is commenced.

1.B.4.e. Rights Warning

Under Article 31(b), UCMJ a military member suspected of an offense may not be questioned unless he or she is informed of the nature of the offense, advised that he or she does not have to make a statement, and informed that any statement made may be used as evidence. The PIO must advise the person named as the suspect on the CG-4910 of his or her rights under Article 31(b) before asking that person any questions. Enclosure (5) should be used. The PIO should have another person sign the rights advisement and any written statement given by the suspect as a witness. Other military members must also be advised of their rights before questioning if they are suspected of any offenses.

1.B.4.f. Right to Consult with an Attorney

If the suspect says that he or she desires to consult with an attorney at any time during the questioning, questioning must stop immediately. The right to consult with an attorney is distinct from and does not include an obligation on behalf of the government to provide an attorney. The PIO should note that the suspect asked to consult with an attorney. Questioning may not resume until after the member has been provided the opportunity to consult with an attorney. In most cases, sufficient information about the offense(s) may be obtained through other sources, and it will not be necessary to question the suspect. The command should consult its servicing legal office if it believes that it cannot properly dispose of the charges without obtaining information directly from the suspect, necessitating the assignment of an attorney at the investigation stage.

1.B.4.g. Aggravation, Extenuation, and Mitigation

If the PIO ultimately recommends the matter be referred to NJP or court-martial, the PIO's report should also include information appropriate to be considered in aggravation, extenuation, or mitigation [*see*, definitions in appendix I]. The PIO should keep this requirement in mind as the inquiry progresses.

1.B.4.h. PIO Recommended Disposition

The PIO shall not recommend a type or amount of punishment. It is appropriate, however, for the PIO to note important factors for the commanding officer to consider when

determining an appropriate punishment in the event that NJP is awarded. The PIO report shall include a recommendation for one of four possible dispositions:

(1) Dismissal

If the facts indicate that an offense under the UCMJ has not been committed or punishment is not appropriate, the PIO should recommend that the matter be dismissed.

(2) NJP

If the PIO believes the facts support a conclusion that the member committed an offense under the UCMJ [*see*, subparagraph 1.D.1.f below regarding burden of proof at NJP] and NJP appears appropriate, the PIO should recommend NJP and, as the executive officer may direct, make arrangements for any witnesses, statements, documents, and other physical evidence that bear on both sides of the case to be brought to the attention of the commanding officer.

(3) Court-Martial

If the facts appear to warrant referral to trial by court-martial, the PIO should so recommend.

(4) Other Administrative Measures

The PIO may recommend any administrative measures that might seem appropriate. [*See*, section 1.G below for examples of administrative measures that the PIO may recommend.]

1.B.4.i. Member's Opportunity to Inspect Documents and Evidence

At the command's election, the PIO may provide the member a brief summary of the information on which the allegations are based and inform the member that he or she will be given an opportunity to examine all documents and evidence upon which the commanding officer intends to rely in deciding whether and how much NJP to impose. This opportunity will be given either prior to or during the NJP hearing, at the commanding officer's option. The commanding officer may, though he or she is not required to, also allow the member to copy all or parts of the PIO's report and other supporting materials.

1.B.5. Final Review

1.B.5.a. Review of Preliminary Inquiry

The executive officer should review the PIO's report as well as the CG-4910. The executive officer may dismiss the matter, if delegated this authority by the commanding officer, or refer the matter to the commanding officer recommending that the offense(s) be dismissed, disposed of at mast, or referred to trial by court-martial. If the offenses are dismissed or addressed administratively, it is normally good practice to advise the member initiating the CG-4910 of the disposition of the offense(s).

1.B.5.b. Amending the CG-4910

The executive officer may amend the CG-4910 as necessary to ensure the Details of Offenses are supported by evidence. A copy of any amended CG-4910 shall be provided to the member.

1.B.5.c. Executive Officer and Executive Petty Officers Have No NJP Authority

Neither an executive officer nor an executive petty officer has any authority to impose NJP. The authority to impose NJP resides solely with the commanding officer. If delegated the authority, the executive officer or executive petty officer may dismiss a report of offense. Subordinate officers may administratively rebuke, censure, criticize, or warn a suspected offender, however, and, if authorized by the commanding officer, may initiate other administrative action not amounting to NJP. [See, subparagraph 1.G.1.b below regarding limitations on awarding extra military instruction (EMI).]

1.B.5.d. Notice to Member of Intended Action

If the executive officer decides a matter should be disposed at mast, he or she will cause the member to be notified of the recommendation and intended action [see, paragraph 4.a., Part V, MCM]. Enclosures (3a), (3b), (4a), or (4b), as applicable, should be used for this notification. At this point a mast representative should be appointed if one has not already been appointed. [See, subparagraph 1.C.3.a below.]

1.B.5.e. Right to Demand Trial by Court-Martial In Lieu of NJP By Member Not Attached To or Embarked in a Vessel

If the matter will be forwarded for NJP, a member who is not attached to or embarked in a vessel [see, paragraph 3, Part V, MCM] must be informed that he or she has a right to demand trial by court-martial in lieu of non-judicial punishment. He or she must also be informed of the right to consult with an attorney before accepting or rejecting NJP. Enclosure (3a) (enlisted) or (3b) (officer) should be used to document the member was notified of his or her rights and whether the member demanded court-martial in lieu of NJP.

1.B.5.f. No Right to Demand Trial by Court-Martial In Lieu of NJP By Member Attached To or Embarked in a Vessel

A member attached to or embarked in a vessel does not have the right to demand trial by court-martial in lieu of NJP. The term “vessel” is defined in 1 U.S.C. § 3; RCM 103 (Discussion); and the definition Appendix of this Manual. The command may, in its sole discretion and if it will not unreasonably delay the proceedings, arrange for the member to consult with a military attorney or provide the member the opportunity to consult with a civilian attorney at his or her own expense prior to imposing NJP to allow the member to obtain information about the NJP process. Enclosures (4a), or (4b) shall be used to document the member was notified of his or her rights.

1.B.5.g. Effect of Demand for Court-Martial In Lieu Of NJP

A demand for trial by court-martial in lieu of NJP by a member not assigned to or embarked in a vessel does not require that charges be preferred, transmitted, or forwarded. The determination to refer a matter to courts-martial resides solely with the command and superior commanders despite a member's demand. NJP may not be imposed, however, while the demand is in effect. The transfer of a member from a shore unit to a vessel after refusing NJP does not invalidate the exercise of this right for those offenses for which a demand for courts-martial was made. A demand for trial by court-martial does not limit the command's authority to implement administrative measures [*see*, section 1.G below].

1.B.5.h. Refusal of Summary Court-Martial

Article 20, UCMJ, gives an enlisted member of the armed forces the right, in all cases, to refuse trial by summary court-martial. Thus, if a member refuses both NJP and trial by summary court-martial, he or she may be tried, if at all, only by special court-martial or general court-martial. Officers may not be tried by summary court-martial.

1.B.5.i. Examination of Documents and Evidence

Prior to imposition of NJP, the member must be allowed to examine documents and other evidence that the NJP authority will examine and consider in determining whether to impose NJP. To avoid delays during the mast itself, the member and his or her designated mast representative should be provided the opportunity to review such materials, including the PIO's report and witness statements, prior to the mast if the case will be forwarded recommending NJP. This may have been accomplished at some commands by the PIO [*see*, subparagraph 1.B.4.i above]. Alternatively, the commanding officer may review the documents and evidence with the member during the mast hearing [*see*, enclosure (1b) or (1c)]. The regional Coast Guard Investigative Service office should be consulted prior to disclosure of a CGIS Report of Investigation.

1.B.5.j. Forwarding the Report

Except where the matter has been dismissed in accordance with subparagraph 1.B.5.c above, the executive officer should forward the completed CG-4910 together with all other information concerning the reported offense(s) to the commanding officer for disposition.

1.B.6. Additional Considerations Prior to NJP of Reservist

1.B.6.a. Scheduling of NJP

A member of the Reserve is subject to the UCMJ while performing Inactive Duty for Training [IDT], Active Duty for Training [ADT], or active duty [*see*, subparagraph 1.A.4.c above]. A reservist may not be retained on IDT or ADT solely for the purpose of maintaining NJP authority. If a command intends to impose NJP on a reservist who is not on active duty for an offense committed while that reservist was subject to the UCMJ,

and a mast cannot be held during the member's current ADT or IDT, the mast should be held during the member's next scheduled ADT or IDT period

1.B.6.b. Involuntary Order to Active Duty

If, due to special circumstances, it is impractical to wait for a member's next scheduled ADT or IDT period, or the member fails to report for his or her next scheduled ADT or IDT period, the commanding officer may request, by message or letter, that the officer exercising general court-martial jurisdiction [OEGCMJ] over that reservist order the reservist to involuntary active duty. Whenever practical, the requested period of active duty should coincide with the member's regular IDT schedule (*e.g.*, same day of the week as normal IDT).

1.B.6.c. Cancellation of Orders when NJP is Refused

If a reservist notifies the OEGCMJ, in writing, that he or she is exercising a right to demand trial by court-martial in lieu of NJP before the reporting date of the order to active duty, the order shall be rescinded.

1.B.7. Additional Considerations Prior to NJP of Public Health Service Member

Prior to taking action under the UCMJ against an active duty member of the Public Health Service [PHS] assigned to duty and serving with the Coast Guard, the convening authority should contact his or her servicing legal office to obtain a copy of the current USCG - USPHS Memorandum of Understanding, which may contain procedural guidance concerning military justice and disciplinary proceedings involving PHS personnel.

1.C. MEMBER REPRESENTATION AT NJP

1.C.1. General

A mast is not an adversarial proceeding. It is different from courts-martial; a member has no right to be represented by an attorney at mast. No military attorney will be detailed to represent a member at mast unless the mast authority is a flag officer and he or she requests an attorney for the member. It is possible, however, that the member may obtain the services of an attorney or any other person, at no expense to the government, to appear as his or her spokesperson [*see*, paragraph 1.C.4 below; paragraph 4.c.(1)(B), Part V, MCM].

1.C.2. Pre-Mast Consultation With Counsel

1.C.2.a. Members Not Attached to or Embarked in a Vessel

(1) Prior to making an election to accept NJP or demand trial by court martial in lieu of NJP, a member not attached to or embarked in a vessel will be afforded

the opportunity to consult with counsel subject to the availability of counsel, the delay involved, or operational commitments and military exigencies. Failure to offer the member an opportunity to consult with counsel prior to making an election to accept or refuse NJP precludes the use of that NJP for sentence enhancing purposes in any future court-martial of the member. [*See, United States v. Booker*, 5 M.J. 238, 243 (CMA 1977).] For purposes of consultation with an attorney, a military attorney may be made available for the consultation (usually by telephone) by the cognizant MLC in accordance with the MLC's established procedures at no cost to the member, or, in lieu of a military attorney made available by the MLC, and provided the proceeding is not unduly delayed thereby, the member may retain a civilian attorney at no expense to the government. A member does not have a right to the assignment of any particular military attorney by the Coast Guard, and the attorney assigned need not be certified in accordance with Article 27(b), UCMJ.

(2) An attorney-client relationship shall attach when the right to consult is exercised, but for attorney-client privilege purposes only. Military attorneys assigned for consultation purposes shall not undertake to represent the member unless directed to do so by proper authority. Whether or not the member exercises the right to confer, any decision to accept NJP must be in writing, signed by the member, and indicating it was a knowing and voluntary decision [*see*, subparagraph 1.B.5.e above and enclosures (3a) or (3b)]. The completed enclosure, or a copy thereof, shall be attached to the record and maintained in the unit punishment log [*see*, paragraph 1.G.4 below].

(3) The attorney assigned by the Coast Guard may be an attorney from another military service assigned by that service through its normal procedures pursuant to inter-service agreement or memorandum of understanding. [*See*, enclosure (24b).]

1.C.2.b. Members Attached to or Embarked in a Vessel

A member attached to or embarked in a vessel has no right to demand trial by court-martial in lieu of NJP or, consequently, to consult with a military or civilian attorney prior to NJP regarding the option to demand trial by court-martial. [*See*, enclosure (4a) or (4b).] A commanding officer, at his or her sole discretion, and if it does not unduly delay proceedings, may permit the member to consult with an attorney similar to the right provided in subparagraph 1.C.2.a above.

1.C.3. Mast Representative

1.C.3.a. Appointment

Except when the member declines appointment of a mast representative, a mast representative shall be appointed to assist the member in preparing for and participating in the mast proceedings. The representative should be an officer or petty officer and must, if practicable, be attached to the unit of the commanding officer conducting the mast. Appointment of the representative should be made by the executive officer either at the time he or she takes initial action on the Report of Offense and Disposition (CG-4910) [*see*,

subparagraph 1.B.3.b above] or prior to forwarding the Report of Offense and Disposition to the commanding officer [*see*, paragraph 1.B.5 above].

1.C.3.b. Request for Particular Mast Representative

If there is an individual attached to the unit whom the member desires to have as a mast representative, such individual should be appointed, if practicable and reasonably available, provided that he or she is neither involved in the matter that is the subject of the mast nor expected to be a witness in the proceedings. The command is not required to assign a particularly requested mast representative in every situation (*e.g.*, if the requested mast representative is deemed incapable of providing mature advice to the member, if requested mast representative is not reasonably available, etc.), and may, in those situations where a requested representative is not assigned, assign as a mast representative an individual deemed capable of best assisting the member to present his or her case.

1.C.3.c. Role of the Mast Representative

The mast representative, if one is appointed, serves primarily to assist the member in preparing for and presenting his or her side of the matter and to speak for the member, if the member desires. It is Coast Guard policy that the mast representative may question witnesses, submit questions to be asked of witnesses, present evidence, and make statements inviting the commanding officer's attention to those matters he or she feels are important or essential to an appropriate disposition of the matter. In addition, the mast representative may make a plea for leniency, and to that end, may solicit and submit statements regarding the reputation of the member at the unit as well as other matters in extenuation or mitigation.

1.C.3.d. Declining Appointment of Mast Representative

Even if a member declines appointment of a mast representative, the command may, but is not required to, appoint one and inform the member. This option provides the member someone with whom he or she can discuss his or her case should the member reconsider the waiver of a mast representative before mast. The mast representative appointed when the member declines one should be informed of the waiver and advised the member may prefer to not have the benefit of the mast representative's advice.

1.C.3.e. Communications Between Mast Representative and Member

By policy, communications between a member and his or her mast representative shall be privileged in the same manner as is the relationship between an attorney and client. Commanding officers or their designees shall so advise mast representatives at the time of appointment.

1.C.4. Spokesperson

1.C.4.a. Entitlement

In lieu of a mast representative, the member may elect to be accompanied at mast by a spokesperson. A spokesperson is different from a mast representative and does not perform the same role at a mast. A spokesperson does not have to be a crewmember or even a member of the Coast Guard. A spokesperson is provided or arranged for solely by the member at no cost to the government. A command need not allow a spokesperson to accompany the member so long as the punishment to be imposed will not exceed extra duty for 14 days, restriction for 14 days, and an oral reprimand. [See, paragraph 4.c.(1)(B), Part V, MCM.] A spokesperson is not entitled to travel or similar expenses.

1.C.4.b. In Lieu of Mast Representative

A spokesperson may attend the mast in lieu of a mast representative appointed by the command [see, paragraph 1.C.3 above]. At the sole discretion of the commanding officer, a member may be accompanied by an assigned mast representative in addition to the spokesperson. A spokesperson is an individual selected and arranged for by the member who, at the member's election, speaks for him or her at those times during the mast when the member's responses are invited by the commanding officer. A spokesperson may be anyone, including an attorney retained by the member. Any acknowledgement of rights should be made personally by the member, however, and not acknowledged on behalf of the member by the spokesperson.

1.C.4.c. Qualifications

Such spokesperson need not be qualified under RCM 502(d) (*i.e.*, does not have to be qualified as an attorney). The commanding officer may not exclude the spokesperson from the mast solely because he or she is an attorney.

1.C.4.d. Mast Need Not Be Delayed

The reasonable scheduling of a mast need not be delayed to permit the presence of a spokesperson. A mast conducted as may be reasonably scheduled without a spokesperson present because of the spokesperson's inability to be present is not limited by the punishment caps stated in paragraph 4.c.(1)(B), Part V, MCM and in subparagraph 1.C.4.a above.

1.C.4.e. Not An Adversarial Proceeding

A mast is not an adversarial proceeding. A spokesperson is not permitted to examine or cross-examine witnesses [see, paragraph 4.c.(1)(B), Part V, MCM]. The commanding officer may, as a matter of discretion, permit a spokesperson to examine or cross-examine witnesses. A spokesperson is always permitted to speak for a member when the member is otherwise entitled to speak. The purpose of precluding a spokesperson from examining witnesses is to avoid having the mast hearing become an adversarial proceeding.

1.C.4.f. Communications Between Spokesperson and Member

By policy, communications between a member and his or her spokesperson shall be confidential in the same manner as communications between a member and his or her mast representative [*see*, subparagraph 1.C.3.e above].

1.D. NJP PROCEDURE

1.D.1. General

1.D.1.a. Place

Traditionally, mast was held on a ship's quarterdeck, or "before the mast." Although most masts are now held in a cutter's wardroom or cabin or the commanding officer's office ashore, the commanding officer may hold mast where the unit's crew can observe it. The setting should maintain appropriate dignity and decorum for such a proceeding and allow the mast to be held without interruption or distractions.

1.D.1.b. Presence of the Member

It is Coast Guard policy that the member must be present at the mast. There are a number of exceptions to this policy:

(1) Member Afforded Rights of a Party

A mast may be held in the member's absence where NJP is awarded on the basis of the record of a court of inquiry or an investigative body in which proceedings the member was afforded the rights of a party with respect to the offense(s) for which NJP is contemplated. [*See*, section 1.H below.]

(2) Member Absent Without Authority

A mast may be conducted in a member's absence for a member absent without authority if the member was previously given notice that the command was considering NJP, informed of the suspected offenses and his or her rights at mast, and, if not attached to or embarked in a vessel, did not demand trial by court-martial in lieu of NJP [*see*, paragraph 1.B.5 above].

(3) Member Waives Right to be Present

A member may waive this right to be present at mast by submitting in writing a statement of his or her desire to waive presence at the mast and an acknowledgement that he or she has had an opportunity to submit all matters in defense, extenuation and mitigation for the commanding officer's consideration. Even if the member properly waives this right, the commanding officer may require the member's presence.

1.D.1.c. Special Arrangements For Member at a Detached Unit

A member at a detached unit is considered “present” if the mast is held by two-way videoconference. A member assigned to a detached unit may also waive the right to be present at mast [*see*, subparagraph 1.D.1.b above] or ask to participate in the mast via telephone conference call.

1.D.1.d. Official Attendees

Normally, the unit executive officer, command chief, if mast is held for an enlisted member, and the member’s department head, division officer, or chief petty officer attend the mast. A unit master-at-arms may attend and coordinate the proceeding as directed by the commanding officer. A yeoman or other clerical assistant may be directed to attend to take notes of the proceeding and prepare record entries. If the member has a mast representative, he or she shall be present unless excused by the member. If the member has a spokesperson in lieu of a mast representative [*see*, paragraph 1.C.4 above], the spokesperson may be present if the mast would not be unduly delayed to permit the presence of a spokesperson. All official attendees, including those listed above, attend the mast at the discretion of the commanding officer.

1.D.1.e. Proceedings Open to the Public

A mast is normally open to the public unless the commanding officer determines that it should be closed due to operational necessity, to prevent disclosure of classified information, or other good cause. In addition, the commanding officer may close the proceedings if the maximum punishment to be imposed will not exceed extra duty for 14 days, restriction for 14 days, and an oral reprimand [*see*, paragraph 4.c.(1)(G), Part V, MCM.]. Any persons whom the member desires present should be allowed to attend unless the mast is closed. The command is not required to delay the mast or make special arrangements to provide public access to the proceeding. The commanding officer may take necessary steps to ensure the mast is conducted in an orderly manner. Nothing in these requirements shall preclude the alleged offender from conferring privately with the commanding officer during the alleged offender’s opportunity to make a statement, at the commanding officer’s discretion, to relate matters that, in the opinion of the alleged offender, are of a personal matter.

1.D.1.f. Burden of Proof

The burden of proof required in order to award punishment at NJP is a preponderance of evidence. This standard means that before NJP may be awarded, the commanding officer must determine it is “more likely than not” that the member committed an offense(s) defined by the UCMJ. Each element of each offense as defined in the Manual For Courts-Martial [MCM] must be supported by a preponderance of the evidence (*i.e.*, it is “more likely than not” that the element occurred). This is a lower standard of proof than the “beyond a reasonable doubt” standard used at court-martial to find the member committed an offense.

1.D.1.g. Rules of Evidence

A member retains the right against self-incrimination at a mast, and may not be forced to make a statement or answer questions. [See, Article 31(b), UCMJ.] Privileges arising from communications with a spouse, an attorney, a member of the clergy, or a psychotherapist apply at mast, with certain exceptions [Section V, Military Rules of Evidence, Part III, MCM]. Other rules of evidence applicable to courts-martial do not apply at mast. The commanding officer may consider hearsay, or a statement made outside the mast proceeding, such as police reports and oral or written statements made to an investigator, whether or not the person who made the statement appears in person at the mast. When deciding whether a hearsay statement is credible and the weight it should be given, the commanding officer should carefully evaluate the circumstances under which the statement was made. Judicial exclusionary rules involving rights warnings and search and seizure do not apply at a mast, and the commanding officer may consider evidence that would be inadmissible at court-martial. The commanding officer should apply a rule of fundamental fairness: under all of the circumstances, is it fair to the member to consider this evidence? The commanding officer should consult his or her servicing legal office with any questions about whether or not to consider specific evidence.

1.D.1.h. Sentence Disposition Agreements

Commanding officers are discouraged from entering into a “plea agreement” in connection with NJP, and may do so only after consulting their servicing legal office.

1.D.2. Mast Script

Enclosure (1) contains instructions and *two* suggested scripts (enclosure (1b), a detailed script and enclosure (1c), an abbreviated script) for use in conducting mast pursuant to Article 15, UCMJ. Following either suggested script is not required for valid action under Article 15, UCMJ; however, ensuring the member’s rights are provided and preserved is required. Each script is intended to assist the mast authority to accomplish that goal. The detailed script answers the majority of questions and issues that may arise during a mast hearing. The mast authority may amend and stylize the provided scripts as necessary, or follow a different process to meet the unit’s need for good order and discipline to the extent the member’s rights under law (Articles 15 and 31b, UCMJ), Presidential Order (Part V, MCM), and regulations of the Judge Advocate General of the Coast Guard and Chief Counsel (Chapter 1, MJM), are followed.

1.D.3. Commanding Officer’s Opening Statement

[See, paragraph 1, enclosure (1b).]

The commanding officer should begin the mast by advising the member of the procedure that will be followed during the hearing. He or she should again inform the member of the right to remain silent, and that any statement may be used against the member in deciding to impose NJP or in a trial by court-martial. A member who is not attached to or embarked in a vessel should also be reminded of the right to demand trial by court-

martial in lieu of NJP. The mast must be terminated if the member asserts his or her right to demand trial by court-martial at any time prior to imposition of NJP.

1.D.4. Right to Demand Trial by Court-Martial in Lieu of NJP

[See, paragraph 2, enclosure (1b).]

1.D.5. Informing the Member of the Reported Offense(s)

[See, paragraph 3, enclosure (1b).]

The commanding officer should inform the member of the identity of the person who submitted the report of offense and the offense(s) allegedly committed. The description of the offense should be sufficiently detailed to allow the member to respond to the allegations. Normally, this information may be taken directly from the CG-4910. In some cases, it may be necessary to provide additional information about the offense to ensure that the member is adequately informed of the allegations.

1.D.6. Right to Assistance of Mast Representative or Spokesperson

[See, paragraph 4, enclosure (1b).]

1.D.7. Inquiry of Member

[See, paragraph 5, enclosure (1b).]

The commanding officer should ask the member if he or she admits committing the alleged offense(s). If the member admits committing the offense(s), the commanding officer does not need to examine witnesses or receive any additional evidence about the offenses. If the member does not admit committing the alleged offense(s), the commanding officer should call witnesses and review other available evidence. The member may also invoke the right to remain silent and decline to answer any questions. The commanding officer may not consider the member's silence as evidence that he or she committed an offense or in deciding what punishment to impose.

1.D.8. Examination of Witnesses by the Commanding Officer and Member

[See, paragraph 6-7, enclosure (1b).]

1.D.8.a. General

A witness may be questioned by speakerphone if he or she is unable to appear at the mast in person. Witnesses may be allowed to be present throughout the mast, or may, at the commanding officer's discretion, be excluded except when called for questioning. A ci-

vilian witness, other than a Coast Guard employee, may not be compelled to appear at mast, but may do so voluntarily.

1.D.8.b. Method

Generally, the commanding officer calls and questions each witness. He or she may call witnesses in any order or sequence. The commanding officer may also keep witnesses separated or direct them to not discuss the case with among themselves or with others, but is not required to do so. The commanding officer may use any procedure to develop the facts and circumstances surrounding the alleged offenses (*e.g.*, question and answer, open narrative). Witnesses may also be questioned about any prior oral or written statements. The commanding officer may also allow the executive officer or any of the other attendees to suggest questions to be asked of a witness.

1.D.8.c. Oaths

Normally, witnesses are not placed under oath, but may be if the commanding officer desires. An appropriate oath for a witness would be as follows: “Do you [swear] [affirm] that the evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth [, so help you God]?” The use of “affirm” versus the combination of “swear” and “so help you God” is a religious preference to be taken by the witness.

1.D.8.d. Questioning by Member

After the commanding officer finishes questioning a witness, the member or his or her mast representative should be allowed to question the witness. The commanding officer may control the proceedings as necessary to ensure that any questioning helps to discover the truth of the allegations against the member, avoids wasting time, and protects a witness from harassment or unnecessary embarrassment. The commanding officer may also require the member or his or her mast representatives to submit questions in writing prior to the mast or orally at the mast for the commanding officer to ask a witness. The Commanding Officer may prohibit a spokesperson from questioning witnesses if in the Commanding Officer’s opinion such questioning would turn the proceedings adversarial.

1.D.8.e. Additional Witnesses

After all planned witnesses have been questioned, the member and his or her mast representative should be asked if they desire that the commanding officer call additional witnesses. If so, those witnesses should be called if they are reasonably available and the commanding officer believes that they will provide relevant information and assist the commanding officer in arriving at a decision. If necessary, the commanding officer may temporarily suspend the mast while the additional witnesses are located.

1.D.9. Dismissing Unsupported Allegations

[See, paragraph 8, enclosure (1b).]

The commanding officer should dismiss any alleged offense not supported by a preponderance of the evidence (*i.e.*, it is more likely than not that the member committed the offense). To accomplish this, the commanding officer should line out any dismissed offenses on the CG-4910 and inform the member. If necessary, the commanding officer may recess to consider the evidence. The mast proceeds with respect to any remaining offenses. If no offenses remain, the commanding officer terminates the mast. A mast ending in dismissal of all offenses is not punishment and no Court Memorandum (Form CG-3304) entry shall be made in the member's service record.

1.D.10. Opportunity for Member's Statement

[See, paragraph 9, enclosure (1b).]

After all of the witnesses have been questioned and other evidence considered, the member should be offered an opportunity to make a statement about the alleged offense(s). In addition to matters in defense, the member may provide information in mitigation and extenuation [*see*, definitions in Appendix 1.A]. The commanding officer may again remind the member of the right to remain silent, but is not required to do so because the member was advised of this right at the beginning of the mast. If the member makes a statement admitting to new or more serious offenses, an additional rights warning is appropriate [*see*, Article 31(b), UCMJ]. The member may make a statement personally or through the mast representative or spokesperson. The member may also submit statements or ask that additional witnesses be called for questioning about the member's overall performance of duty or character.

1.D.11. Resolving Discrepancies or Inconsistencies

[See, paragraph 10, enclosure (1b).]

If necessary, the commander officer may recall any witness to resolve discrepancies or inconsistencies.

1.D.12. Extenuation and Mitigation

[See, paragraph 11, enclosure (1b).]

The commanding officer should allow the member to present evidence in extenuation or mitigation of the offense. Extenuation evidence is information tending to explain the circumstances surrounding the commission of the offense(s). Mitigation evidence is information that might justify the imposition of a lighter punishment than might otherwise be awarded.

1.D.13. Consideration of Prior Documented Performance

[See, paragraph 12, enclosure (1b).]

The commanding officer should review the member's personal data record (PDR) and consider the member's prior performance in deciding whether to impose NJP and, if so, how much punishment is appropriate. He or she may consider the member's marks, prior NJP or appearances at mast, positive or negative Administrative Remarks entries, CG-3307, and court-martial convictions.

1.D.14. Comments by Executive Officer/Department Head/Division Officer/Chief, or Command Chief

[See, paragraph 13, enclosure (1b).]

The commanding officer may ask the member's department head or division officer, command chief, and the executive officer to comment on the offense and the member's prior performance of duties. Other persons in the member's chain of command may also be asked to comment. While each of those asked to comment should not "champion" a poor performer, he or she should be prepared to present favorable information along with the not so favorable to help the commanding officer reach a balanced view of the conduct under consideration. If such individual knows of information that may be helpful to the member that has not been brought out at mast, he or she should make this known to the commanding officer.

1.D.15. Findings

[See, paragraph 14, enclosure (1b).]

If the commanding officer determines, based on a preponderance of the evidence, that the member committed one or more offenses, the commanding officer should announce, in layman's terms, what offenses the member committed.

1.D.16. Vacation of Earlier Suspended Punishment

[See, paragraph 15, enclosure (1b).]

Vacation of the suspension and reinstatement of the suspended punishment should be announced before new punishment is imposed.

1.D.17. Dismissal with a Warning

[See, paragraph 16, enclosure (1b).]

The commanding officer may decide not to punish a member by dismissing the matter with a warning. Such a decision may be based on either a lack of proof or a determination that punishment is not appropriate even though the member committed an offense(s).

That decision is not considered NJP, and no Court Memorandum (Form CG-3304) entry shall be made in the member's service record.

1.D.18. Referral to Court-Martial

[See, paragraph 17, enclosure (1b).]

If the commanding officer determines that the alleged offense is too serious to be disposed of through NJP, he or she should not announce a finding or impose NJP. The commanding officer should inform the member that he or she intends to consider referring the matter for trial by court-martial [*see*, section 3.G below], or referring the matter to his or her superior commander, and that the member will be informed when a decision is made.

1.D.19. Imposition of Nonjudicial Punishment

[See, paragraph 18, enclosure (1b).]

If the commanding officer determines that, based on the evidence presented, that it is more likely than not that an offense was committed and that NJP is appropriate, he or she should announce punishment at this point. If the commanding officer decides to impose punishment, he or she should choose the punishment or combination of punishments that is most appropriate for the member, the offense(s), and the good order and discipline of the unit [*see*, paragraph 1.E.2 below for a list of permissible punishments and paragraph 1.E.1 below for the table of maximum punishments]. In determining the appropriate punishment, the commanding officer should consider the purposes of NJP [*see*, paragraph 1.A.2 above] and the general factors to be considered when awarding punishment [*see*, subparagraph 1.A.6.b above]. The commanding officer shall indicate the disposition of the offense(s) by completing and signing the "Action of the Commanding Officer" section on the CG-4910.

1.D.20. Further Investigation or Proceedings

It is not necessary that the commanding officer dispose of a case in one mast session. In unusual circumstances, the commanding officer may continue the mast proceedings to a later session to allow more time for deliberation or to require the gathering of additional information. Also, if it appears during the mast proceedings that other persons or major offenses are involved or that further investigation is required, the commanding officer may terminate the mast proceedings and order an investigation by an appropriate investigative body. None of these actions prevent a commanding officer from disposing of the matter at a subsequent mast, unless the matter is determined to involve a major offense. If at the time the commanding officer reopens an earlier continued mast proceeding, he or she has received reports of additional offenses of which the member is suspected, and the commanding officer has determined that these additional offenses will be disposed of at a mast proceeding, all of the offenses shall be disposed of at the same time. This is consis-

tent with the general policy that all known offenses be disposed of at one time at the lowest appropriate forum.

1.D.21. Member's Right to Appeal

[See, paragraph 19, enclosure (1b).]

If the commanding officer imposes NJP, he or she shall inform the member of the right to appeal [*see*, section 1.F below].

1.D.22. Publication

Publication of NJP results serves to deter other members of the unit from committing similar offenses and has salutary effects on unit morale. Commanding officers may, if the interests of offender rehabilitation, good order and discipline, morale, and perceptions of fairness so warrant, establish a policy to announce NJP disposition decisions. For example, announcement may be made via a Plan of the Day, posted on a bulletin board or announced at formation. If the means of publishing NJP results is accessible to or disseminated to non-military personnel, the results may be published without the member's name.

1.E. PUNISHMENT AT NJP

1.E.1. Maximum Punishment

1.E.1.a. Limited by Rank or Grade

The maximum punishment that may be imposed depends upon the rank of the authority imposing punishment, the rank or grade of the member being punished, and in some situations by the combination of punishments awarded (*i.e.*, the number of days of restriction and extra duties awarded to run concurrently may not exceed the number of days of punishment authorized had only extra duties been awarded). The limitations shown in the following two tables apply to each instance of NJP and not to each offense. These tables are also reproduced in enclosure (1d) and enclosures (3a) and (4a) or (3b) and (4b).

1.E.1.b. Table of Maximum Punishment for Officers and Warrant Officers

Subject to the limitations in subparagraph 1.E.1.d below the following table depicts the maximum punishments that may be awarded at mast to an officer or warrant officer:

Punishment Type	Maximum Punishment(s) Imposed Upon an Officer or Warrant Officer When Imposed By a...		
	Flag Officer	LCDR (O-4) or Above	LT (O-3) or Below
Admonition or Reprimand	Yes	Yes	Yes
<i>See, d.(1), below.</i> Arrest in Quarters	30 days	No	No
<i>See, d.(3) & (5), below.</i> Restriction	60 days	30 days	15 days
Forfeiture of Pay	1/2 of 1 month pay per mos for 2 mos	No	No

1.E.1.c. Table of Maximum Punishment for Enlisted Personnel

Subject to the limitations in subparagraph 1.E.1.d below the following table depicts the maximum punishments that may be awarded at mast to an enlisted member:

Punishment Type	Maximum Punishment(s) Imposed Upon an Enlisted Member When Imposed By a(n)...		
	LCDR (O-4) or Above	LT (O-3) or Below	Enlisted Officer in Charge
Admonition or Reprimand	Yes	Yes	No
<i>(E-3 & below only)</i> Correctional Custody <i>See, d.(2) & (5), below.</i>	30 days	7 days	No
Restriction <i>See, d.(3) & (5), below.</i>	60 days <i>(See, d(3), below)</i>	14 days	14 days
<i>(E-6 & below only)</i> Extra Duties <i>See, d.(3) & (4), below.</i>	45 days	14 days	14 days
Forfeiture of Pay	1/2 of 1 month pay per mos for 2 mos	7 days pay	3 days pay
<i>(E-6 & below only)</i> Reduction in Pay Grade	Yes	Yes	No

1.E.1.d. Limitations and Prohibitions on Punishments

All authorized maximum punishments listed in paragraphs 1.E.2 below, may be imposed in a single mast with the following exceptions:

- (1) Arrest in quarters may not be imposed in combination with restriction;
- (2) Correctional custody may not be imposed in combination with restriction or extra duties. It shall not be imposed upon members in pay grade E-4 and above unless an unsuspended reduction to E-3 is imposed.
- (3) Restriction and extra duties may be combined to run concurrently or consecutively. When both extra duty and restriction are awarded at the same mast, however, they form a new “combined” punishment that cannot exceed the maximum that may be imposed for extra duties [*see*, subparagraph 1.E.2.e below].
- (4) Extra duties may only be imposed on members of the grade of E-6 and below; and,
- (5) Arrest in quarters, Correctional Custody, and Restriction may not be imposed on a reservist at NJP awarded during inactive duty training or involuntary active duty pursuant to an order under subparagraph 1.B.6.b above.
- (6) The following are *not authorized* nonjudicial punishments in the Coast Guard:
 - (a) Detention of pay is not listed in Part V, MCM and is not an authorized punishment; and,
 - (b) Confinement on bread and water (or diminished rations) is listed in Part V, MCM, but is not an authorized punishment in the Coast Guard.

1.E.2. Types of Authorized Punishments

1.E.2.a. Punitive Admonition or Reprimand

[See, paragraph 5.c.(1), Part V, MCM; Article 8.E., Coast Guard Personnel Manual, COMDTINST M1000.6 (series); definitions in appendix I.]

- (1) Punitive admonition and reprimand are two forms of censure intended to express adverse reflection upon or criticism of a person’s conduct. A reprimand is a more severe form of censure than an admonition. Punitive admonition and reprimand should not be confused with nonpunitive censure and other forms of administrative corrective measures. [*See*, subparagraph 1.G.1.d below; Article 8.E., Coast Guard Personnel Manual, COMDTINST M1000.6 (series).].

(2) In the case of commissioned officers and warrant officers, admonitions and reprimands awarded at NJP must be administered in writing. In other cases, they may be administered either orally or in writing. The punitive letter of admonition or reprimand shall be similar in form to enclosure (6b).

(3) While punitive letters of admonition or reprimand are not considered generally appropriate in the case of enlisted personnel below the grade of E-7, their use against lower ranking personnel is not precluded.

(4) If a punitive letter is appealed and not sustained on appeal, a copy of the letter will not be filed in the official record of the member concerned.

1.E.2.b. Restriction

Restriction is moral restraint to specified geographical limits set by the commanding officer imposing the punishment. While the limits of restriction are usually specified to be that of the vessel or the boundaries of a shore unit, the limit can be greater or, within reasonable limits, lesser. It is recommended, especially at larger units, that a written letter be directed to the member setting forth the exact times and geographical limits of the restriction (*e.g.*, USCGC NORTHLAND, Station Monterey). A restriction to the limits of Coast Guard Group San Francisco would authorize the restricted member to be anywhere within the limits of Group San Francisco (*e.g.*, Lake Tahoe, Point Arena, Bodega Bay, Rio Vista and points in between). The sample letter contained in enclosure (6a) should serve as a guide for restriction letters.

(1) In the case of a member serving on a vessel, the execution of this punishment may be delayed until arrival of the vessel in port. The commanding officer of a vessel has the discretion to determine whether “arrival of the vessel in port” occurs at a brief stop or port call lasting only a few days or at the end of the current deployment and return to homeport.

(2) Once commenced, restriction runs continuously and cannot be interrupted, except for the service of a punishment of confinement or restriction adjudged by a court-martial, an appeal of the NJP, or emergency leave. In the event that restriction is interrupted, the remaining period of restriction shall be served in full upon termination of the interruption.

(3) Unless specified by the commanding officer, a restricted member will ordinarily be required to perform his or her full military duties.

(4) Restriction is legal even though as a collateral consequence of the restriction, the member is deprived of other benefits. Example: loss of flight pay because restriction grounds a pilot or flight crewmember.

(5) Restriction, while punitive, is a limited deprivation of liberty. Restriction should not include unreasonable limitations on privileges extended to all unit personnel (*e.g.* visitation, telephone use, exchange or ship’s store use).

1.E.2.c. Arrest in Quarters

Arrest in quarters is a moral restraint of officers to specified quarters established by the commanding officer (a flag officer in command) imposing the punishment. The officer may be required to perform certain of his or her regular duties as long as they do not involve exercise of authority over subordinates.

1.E.2.d. Correctional Custody

Correctional custody is the physical restraint of a member during duty or non-duty hours, or both. A member undergoing correctional custody may be required to perform those regular military duties and extra duties assigned by the authority charged with administering the correctional custody facility. Correctional custody is not deductible time for any purpose. The demanding logistics and administration of correctional custody [*see*, Article 8.F.10., Coast Guard Personnel Manual, COMDTINST M1000.6 (series)] should be reviewed prior to awarding correctional custody as punishment.

1.E.2.e. Extra Duties

(1) Extra duties involve the performance of duties in addition to those normally assigned to the member being punished. Military duties of any kind may be assigned. Extra duties assigned to petty officers may not be of a type that demeans their grade or position. No extra duties may be imposed that constitute a known health or safety hazard to the member or that constitute cruel or unusual punishment.

(2) Extra duties are performed after regular working hours and do not constitute restriction except for the period of time in which the extra duties are actually being performed.

(3) No extra duties are to be performed on the member's Sabbath day. The member will receive credit for performing extra duty on the Sabbath day if it falls within the prescribed period of extra duty. For example, if the member is awarded five days extra duty at two hours per day at mast on a Thursday and he or she observes a Sabbath day within the next five days, then the member would be credited with performing two hours of extra duty on the Sabbath Day and only perform extra duty on the remaining four days.

(4) In imposing this punishment, the extra duties shall be stated in terms of the number of days. The number of hours to be served daily, not to exceed two hours daily, should also be stated. If the number of hours to be served daily is not stated, it shall be deemed to be two hours daily. The punishment shall not be phrased in terms of total number of hours, nor shall it be phrased in terms that require completion of a specific assignment.

1.E.2.f. Forfeiture of Pay

Forfeiture is pay lost from the pay record before the member receives it. The term "pay" includes base pay or, in the case of reserve personnel on inactive duty, compensation for

periods of inactive duty training, plus sea or foreign duty pay in the case of enlisted members, but not special pay for special qualifications.

(1) Any forfeiture of pay imposed shall be expressed in dollar amounts per month only, and not in dollar and cents, percentage of pay, or in number of day's pay.

(2) If NJP includes both reduction in pay grade and forfeiture of pay, the forfeiture must be based on the pay grade to which the member has been reduced. This is true even if the reduction is suspended.

1.E.2.g. Reduction in Pay Grade

(1) The maximum reduction in pay grade at mast is to the next inferior pay grade.

(2) Commissioned officers serving in command have authority to advance enlisted personnel and exercise promotion authority within the meaning of Article 15(b)(2)(D), UCMJ. Accordingly, when exercising their NJP authority, they may reduce an enlisted member of pay grade E-6 and below to the next inferior pay grade.

(3) Commissioned officers serving in command may restore a member to his or her former pay grade subject to the provisions of Article 5.C.33., Coast Guard Personnel Manual, COMDTINST M1000.6 (series).

1.E.3. Effective Date of Punishment

1.E.3.a. General

All NJP takes effect on the date imposed, except as provided below:

(1) The punishment is suspended.

(2) If the member is assigned to a vessel and is awarded either restriction or restriction in combination with extra duties while the vessel is underway or during a deployment away from homeport, the restriction and extra duties may be deferred pending arrival of a vessel in port. The commanding officer of a vessel has the discretion to determine whether "arrival of the vessel in port" occurs at a brief stop or port call lasting only a few days or at the conclusion of the deployment and the vessel's return to homeport. However, restriction and extra duties once commenced are not deferred again if the vessel gets underway.

(3) If the member submits a timely appeal of the punishment awarded at NJP [see, section 1.F below] and action by the appeal authority is not taken on an appeal within 5 days after the appeal is submitted, the member may request that any unexecuted punishment involving restraint or extra duties be deferred until after action is

taken on the appeal. [See, paragraph 1.F.5 below.] Any such request for deferment shall be granted. [See, paragraph 7.d., Part V, MCM.]

(4) When restriction and extra duty are combined to run consecutively, whichever punishment the commanding officer directs to start later will not take effect until the first of the consecutive punishments is completed.

(5) If a punishment is imposed while a prior punishment of the same type resulting from a separate punitive action is in effect, the prior punishment will be completed before the newer punishment commences. For example, if a member still has one week of restriction remaining and is awarded additional restriction at another mast, the first restriction must be completed before the second period of restriction begins to run. The two periods of restriction would run consecutively, not concurrently.

1.E.3.b. Transfer of Member

(1) Generally

If a member undergoing punishment involving restraint, extra duties, or forfeiture of pay is transferred either PCS or TAD, before the punishment has been fully completed, the departure of the member from the command normally remits the remaining punishment, except as noted below.

(2) Exceptions

The punishment is not terminated or remitted when the receiving command agrees to continue the restraint, extra duties, and/or forfeiture of pay, and:

(a) The sole purpose of the transfer is to provide a suitable place to carry out the unsuspended punishment because the command awarding the punishment was determined to be unsuitable for purposes of executing the punishment;

(b) The punishment is imposed at a temporary duty station and the member is being returned to his or her permanent unit after being temporarily assigned (for a period not in excess of 60 days) to the command imposing the punishment;

(c) The member was transferred to a support command to facilitate discharge processing;

(d) The transfer was because the member missed the sailing or deployment of his or her unit without authority;

(e) The transfer was for the purpose of holding a court-martial, “show cause” board, administrative discharge or re-enlistment review board, medical board or physical evaluation board. Transfers for medical evaluation and/or treatment (inpatient or outpatient) shall neither interrupt nor terminate the service of restraint punishment, even though the member may not actually be under restraint; or

(f) The member was transferred because his or her continued presence adversely affected the good order and discipline or morale of the unit or was interfering with the unit's ability to accomplish its operational mission.

1.E.3.c. Discharge

Any unexecuted portion of NJP is automatically remitted on the date following discharge if the member does not reenlist within 24 hours.

1.E.3.d. Deferral of Punishment

A commanding officer imposing punishment may not defer the execution of an unsuspended punishment, except as provided below:

(1) The commanding officer may defer execution of the punishment of restriction or restriction with extra duties while the unit is underway until its arrival in port. [See, subparagraph 1.E.2.b above.]

(2) A punishment involving restraint or extra duties has been imposed, the member timely appeals the punishment, no action is taken on the appeal within 5 calendar days from the date of the appeal, and the member requests deferral. [See, paragraph 1.F.5 below.]

(3) A prior punishment of the same type is still in effect. In this instance, deferral ends and the punishment commences upon completion of the prior punishment. [See, subparagraph 1.E.3.a above.]

(4) If the member is found by proper authority to be medically unfit to serve the punishment, the commanding officer may defer the execution of the punishment until the member is determined by proper authority to be medically fit to serve the punishment.

(5) The commanding officer may defer the execution of an unsuspended punishment if the commanding officer grants the member emergency leave. In this instance, deferral ends and the punishment commences upon the member's return to duties.

(6) An unauthorized absence by a member serving NJP interrupts the service of that punishment and automatically defers continued service of that punishment. Such deferment ends, in the case of all punishments not involving restraint or extra duties, upon the member's return to a Coast Guard unit that knows of the existence of the deferred restraint or extra duty punishment and has the facilities to carry out the punishment. If an absentee is for other reasons (such as restriction or confinement in anticipation of a court-martial) placed in restraint, such restraint shall not count towards the deferred restraint punishment and the deferral of restraint punishment shall not end until the restraint for other reasons is completed.

1.E.3.e. Not Fit for Duty Status

If a member who is serving extra duties as a punishment is placed in a not fit for duty status, the not fit for duty status defers the service of extra duties. If the extra duties are being served concurrently with restriction, the restriction will continue to run in spite of the not fit for duty status (so long as the member is medically fit to serve restriction). When the member is returned to a fit for duty status, the remaining punishment of extra duties shall be immediately reinstated. Any extra duty remaining to be served when the sentence to restriction is completed is remitted.

1.E.3.f. Conclusion of a Period of Duty for Reservist

If a reservist on active duty undergoing punishment involving restraint is released from active duty before the restraint punishment has been fully completed, the release automatically remits the remainder of the punishment. Conclusion of a period of active duty or inactive duty training does not terminate any other punishment. Except as provided above, unserved punishments may be carried over to subsequent periods of inactive duty training or active duty. [*See, paragraphs 5.e. and 5.f., Part V, MCM.*]

1.E.4. Suspension of Punishment

[See, paragraph 6, Part V, MCM.]

1.E.4.a. General

To suspend a punishment means to hold it in abeyance, or not execute it, for a specified period, with remission at the end of that period. Unless otherwise stated, an action suspending a punishment includes a condition that the member not violate any punitive Article of the UCMJ. Other appropriate conditions of the suspension specified in writing by the NJP authority [*see, paragraph 6.a.4., Part V, MCM*]. If the member violates the conditions of the suspension, the suspension is vacated and the punishment is executed. The commanding officer who imposed NJP, or a successor in command, may, at any time, suspend any part or amount of the unexecuted punishment and may suspend a reduction in pay grade or forfeiture, even if executed. An executed punishment of reduction or forfeiture may be suspended only within a period of four months after the date of execution. The imposition of a punitive letter of admonition or reprimand may not be suspended.

1.E.4.b. Period of Suspension

(1) A suspension must be for a definite period, and this period shall be specified when the punishment is suspended. Suspension of punishment may not be for a period in excess of six months and may be for a shorter period.

(2) The running of the period of suspension is tolled during periods of unauthorized and unexcused absence. The running of the period of suspension is also tolled when proceedings to vacate suspended punishment are commenced.

1.E.4.c. Transfer of Member

When a mast punishment is suspended for a specified period and the member is transferred before the end of the period, the punishment is automatically remitted when the member is transferred PCS or TAD except as provided below:

(1) The sole purpose of the transfer is to provide a place to carry out the unsuspended punishment.

(2) The punishment is imposed at a temporary duty station and the member is being returned to his or her permanent unit after being temporarily assigned (a period not in excess of 60 days) to the command imposing the punishment.

(3) The member is being returned to his or her ship after having missed its sailing without authority.

(4) The member is being returned to his or her unit after having been on temporary additional duty for the purpose of a court-martial, “show cause” board, administrative discharge board, medical board, physical evaluation board, or for medical evaluation and/or treatment.

(5) The punishment is imposed by an active service unit on a reservist who returns to his or her reserve unit or any other unit for subsequent periods of active or inactive duty training.

(6) The member has been assigned TAD or PCS to a support command to facilitate discharge processing.

(7) The member was transferred because his or her continued presence was adversely affecting the good order and discipline or morale of the unit or was interfering with the unit’s ability to accomplish its operational mission.

1.E.4.d. Automatic Remission

Unless the suspension is sooner vacated, suspended portions of a punishment are remitted, without further action, upon the termination of the period of suspension, promotion, or advancement of the member.

1.E.5. Vacation of Suspension

[See, paragraph 6, Part V, MCM; enclosures (1b), (1c), and (7a).]

1.E.5.a. Persons Authorized to Vacate

Any commanding officer competent to impose upon the member punishment of the type and amount involved in the vacation of the suspension may vacate a suspended punishment during the period of suspension. If the punishment under suspension exceeds that which the commanding officer could initially award, the commanding officer may still

vacate the suspension; however, only so much of the punishment may be ordered executed that is within the authority of the present commanding officer to impose. This possibility could arise where a commanding officer was replaced by an officer-in-charge, or where a commanding officer in the grade of LCDR was relieved by a LT.

1.E.5.b. Reason to Vacate NJP Punishment

Unless otherwise stated, an action suspending a punishment includes a condition that the member not violate any punitive Article of the UCMJ. Vacation of a suspension may be based on an offense under the UCMJ or other appropriate conditions of the suspension specified in writing by the NJP authority [*see*, paragraph 6.a.4., Part V, MCM].

1.E.5.c. Vacation Proceedings

[See, paragraph 6.a.(5). Part V, MCM.]

It is not necessary to hold a hearing in order to vacate a prior suspended punishment. However, the member should ordinarily be notified the command is considering vacating a prior suspended punishment and given an opportunity to respond. Enclosure (7a) contains a vacation proceeding script, which may be used if a hearing is held. Alternatively, the mast proceeding contained in enclosure (1b) or (1c) [*see*, paragraph 15, enclosure (1b) or (1c)] may be used to determine if a prior punishment should be vacated prior to imposing punishment for new offense(s).

1.E.5.d. Notification

The member shall be notified if all or a portion of the suspended punishment is vacated. Enclosures (7b-c), which may be reproduced locally, or correspondence in a similar format shall be prepared to ensure that these requirements are met and to create a record of the proceedings. The completed original shall be attached to the corresponding CG-4910 in the unit punishment book after appropriate service record entries are made.

1.E.5.e. Effective Date of Vacation

Vacated punishment begins on the date the commanding officer orders the suspension vacated. The order vacating a suspension must be issued within a reasonable time after commencement of the vacation proceedings.

1.E.5.f. Effect of Vacation

Vacation of a suspension is not itself, NJP. If proceedings to vacate a suspended punishment are combined with a new action under Article 15, UCMJ the commanding officer must ensure it is clear to the member what portion of a prior suspension is vacated prior to imposing nonjudicial punishment for the new conduct. [*See*, paragraph 15, enclosure (1b) or (1c).] Action to impose NJP for the offense that formed the basis for the vacation is permitted. The decision to vacate suspension of NJP is not an issue that may be appealed under paragraph 7 of Part V, MCM.

1.E.5.g. Remitted Punishment

Remitted punishment may not be vacated. By definition, remitted punishment no longer exists in any form to be resurrected.

1.E.6. Mitigating Punishment

1.E.6.a. General

Any part or amount of an unserved portion of a punishment may be mitigated, or reduced in severity. In mitigating a punishment, neither the quantity nor quality of the punishment may be increased. This means that the mitigated punishment may not be of any type more severe than the original punishment.

1.E.6.b. Actions Authorized

A commanding officer may mitigate any part or amount of the unexecuted portion of the punishment as follows:

- (1) Arrest in quarters may be mitigated to restriction (officers);
- (2) Correctional custody may be mitigated to extra duties or restriction or both;
- (3) Extra duties may be mitigated to restriction ;
- (4) Reprimand may be mitigated to admonition;
- (5) Reduction in pay grade, regardless of whether the reduction has been executed, may be mitigated to forfeiture. This form of mitigation must be done within four months of imposition.

1.E.6.c. Limitations

(1) When mitigating punishments authorized in subparagraphs 1.E.6.b(1)-(3), the mitigated punishment must not last for a greater period of time than the original punishment (*e.g.*, seven days correctional custody must not be mitigated to longer than seven days extra duties or restriction or both.)

(2) As restriction is the least severe form of deprivation of liberty, it may not be mitigated to a lesser period of another form of deprivation of liberty (*e.g.*, extra duties), because that would mean an increase in the quality of the punishment.

1.E.7. Remission, Restoration, and Setting Aside

1.E.7.a. Persons Authorized

The commanding officer who imposed the punishment, successors in command, and superior commanding officers have authority to remit or set aside punishments. [See, paragraphs 6.c. and 6.d., Part V, MCM]

1.E.7.b. Successor in Command

The term “successor in command“ is defined as a commanding officer who has succeeded to the command of the commanding officer who imposed the punishment, or under whose delegated power the punishment was imposed, provided that the member punished is still in the command.

1.E.7.c. Initiating Action

Action to remit or set aside a part of the punishment and to restore all rights, privileges, and property affected may be taken at the commanding officer’s own initiative or on application of the member punished. Any such application should be made within a reasonable period of time, generally fifteen days.

1.E.7.d. Remission

Remitting a punishment is an exercise of clemency, and applies only to an unexecuted part of a punishment. The unexecuted part of the punishment that is remitted is not carried out, but that part that has already been served, forfeited, etc., is not restored. Once remitted, an unexecuted punishment may never be revived and re-imposed.

1.E.7.e. Setting Aside and Restoration

Setting aside punishment amounts to wiping the slate clean and, except for collateral administrative action [see, subparagraph 1.E.7.e above] setting aside all punishment awarded at mast is the equivalent of the member never having been punished pursuant to Article 15, UCMJ. The power to set aside punishment and restore rights, privileges, and property affected by the executed portion of a punishment should ordinarily be exercised only when the authority considering the case believes that the ends of justice and discipline are best served by setting aside some or all of the punishment. Both executed and unexecuted portions of a punishment may be set aside. Any punishment set aside is extinguished and, unlike suspended punishment may not be resurrected. The power to set aside executed punishment should be exercised only within a reasonable time after the punishment has been executed (four months absent unusual circumstances). If the entire punishment imposed at a mast is set aside, then:

- (1) The effective date of restoration to the former pay grade is the date of advancement to that pay grade prior to the date of the mast that effected the reduction.

(2) The NJP that has been set aside is not considered NJP for purposes of determining the member's eligibility for a Good Conduct Medal, advancement, or appointment to warrant officer.

(3) A conduct mark lowered as a result of the conduct that resulted in the NJP will not automatically be raised, unless the commanding officer assigning the conduct mark deems it appropriate. Assigning an appropriate conduct mark is an administrative decision that must be made as a result of awarding NJP, but NJP is not a prerequisite to appropriately evaluating a member's conduct under personnel regulations.

1.F. APPEAL OF NJP

1.F.1. General

A member punished under Article 15, UCMJ, may appeal if he or she considers the punishment imposed "unjust" or "disproportionate" to the acts of misconduct for which punished. Additionally, a member who received a punitive letter may appeal, claiming that a matter raised in the letter is "inaccurate" or "not relevant" to the offense committed or the punishment imposed. The appeal must be submitted in writing within 5 calendar days of the imposition of the punishment, or the right to appeal shall be waived in the absence of good cause shown. The day the punishment is awarded does not count in the computation. The appeal period commences to run even though all or any part of the punishment imposed is suspended. An appeal is "submitted" when it is received by the member's supervisor or any more senior individual in the member's unit chain of command. The contents of the appeal must be couched in terms that are temperate and factual.

1.F.1.a. Definitions

(1) Unjust

The term "unjust" denotes illegality. For example, the act of misconduct for which punishment was imposed was not a punishable offense under the UCMJ; the member was not subject to the jurisdiction of the commanding officer who imposed punishment; the commanding officer who imposed punishment was without power or authority to act in the member's case; or, the punishment exceeded legal limitation based upon the status of the member and/or the commanding officer who imposed the punishment. Similarly, the illegality may result from the denial of a substantial right of the member at any stage of the proceedings, *e.g.*, investigation, preliminary inquiry, interrogation, or mast; or it may result from the failure to comply with procedural provisions applicable to mast punishment; or it may result from a lack of sufficient evidence to establish that, more likely than not, the reported misconduct, the member's involvement in the misconduct, or both occurred.

(2) Disproportionate

The term “disproportionate” indicates that although the punishment imposed was legal, it was excessive or too severe considering all of the circumstances, as, *e.g.*, the nature of the misconduct involved; the absence of aggravating circumstances; the prior good record of the member; or, any other circumstances that tend to lessen the severity of the misconduct or explain it in a light more favorable to the member. Adverse administrative consequences of NJP such as delay in advancement or inability to reenlist are not punishment and are not a proper basis for NJP appeal.

1.F.2. Who Acts on Appeal

Appeals shall be submitted via the commanding officer who imposed the NJP to the next superior commanding officer in the chain of command who has a law specialist regularly assigned to his or her command. For District, MLC, and Area units, this would normally be the respective District, MLC or Area Commander.

a. The next superior for Area Commanders and Superintendent, United States Coast Guard Academy, or an officer to whom NJP authority has been delegated by them, is Commandant (G-W).

b. The respective Area Commander is the next superior in the chain of command in cases involving NJP imposed by an MLC Commander, a District Commander, or an officer to whom NJP authority has been delegated by such a commander.

c. The next superior for commanding officers of other Headquarters units is the MLC Commander exercising general court-martial jurisdiction [OEGCMJ] over their command.

d. The next superior for other service commanding officers imposing NJP on Coast Guard members under subparagraph 1.A.4.f above, in the absence of a specific, contrary directive controlling appeals, is the first Coast Guard commanding officer in the member’s chain of command with a law specialist regularly assigned. If no Coast Guard commanding officer with a law specialist regularly assigned is within the member’s chain of command, appeals shall be submitted to the cognizant MLC Commander if the officer imposing punishment is junior to the MLC Commander, and otherwise to the next Coast Guard commanding officer superior to the cognizant MLC Commander who is also senior to the officer imposing punishment.

e. An appeal authority who is an OEGCMJ or is an officer of flag rank may delegate the power to respond to NJP appeals under Article 15(e), UCMJ, to a principal assistant [*see*, subparagraph 1.A.3.d above]. An officer who has delegated his NJP powers to a principal assistant may not act on an appeal from punishment imposed by that principal assistant.

1.F.3. Format of Appeal

The appeal shall be in writing and shall set forth a summary of the prior proceedings in the member's case; a detailed explanation of the basis for the appeal stating that the punishment imposed was either unjust or disproportionate, or both, and why; and finally, the specific action that the superior officer to whom the appeal is made is requested to take. Enclosure (6c) contains a sample letter of appeal that may be followed.

1.F.4. Intermediate Action on NJP Appeal

1.F.4.a. Appeal "Granted" by NJP Authority

If upon receipt of an appeal, the commanding officer who imposed the punishment determines that the appeal has merit, he or she may either set the punishment aside or adjust the punishment to that requested by the member making the appeal. If that action is taken, the commanding officer shall so advise the member and will not forward the appeal. The unit punishment log and associated court memorandum must be appropriately corrected.

1.F.4.b. Appeal "Denied" and Forwarded by NJP Authority

(1) If upon receipt of an appeal, the commanding officer determines that the requested relief should not be granted in total, the appeal shall be forwarded to the next superior commanding officer in the chain of command [*see*, paragraph 1.F.2 above]. Appeals should be forwarded as soon as possible to avoid deferments of punishment [*see*, paragraph 1.F.5 below]. The commanding officer's endorsement shall be signed personally by the commanding officer imposing punishment or the acting commanding officer and shall contain the following:

- (a) A statement summarizing the proceedings held in the matter.
- (b) A statement of the facts found by the commanding officer who imposed punishment based on the information considered by him or her and those facts that formed the basis for the punishment imposed.
- (c) A statement of the commanding officer's reasons as to why the member's appeal should not be granted.
- (d) A copy of the applicable CG-4910. The original CG-4910 remains in Unit Punishment Log.

(2) All written documents relating to the member's case including, but not limited to: any written report by the individual assigned to conduct the preliminary inquiry in the member's case; any written statements of persons appearing at the mast as witnesses; and the report of any investigation or court of inquiry that served as the basis for the imposition of NJP if no mast hearing was held. Enclosure (6c) contains a sample endorsement a commanding officer may follow.

(3) A copy of the endorsement to the appeal shall be furnished to the member.

1.F.5. Punishment Pending Decision on Appeal

A member who appeals his or her NJP punishment is required to serve any punishment while the appeal is pending. If action by the appeal authority is not taken on the appeal within 5 calendar days after submission, however, the member may request any unserved punishment involving restraint or extra duties be deferred until the action on appeal is taken. Such requests shall be granted.

1.F.6. Action on Appeals

1.F.6.a. General

Appeals should be expedited whenever possible so that punishments need not be deferred [See, paragraph 1.F.5 above].

1.F.6.b. Review by a Law Specialist

An officer acting on an appeal shall (and in other cases may) refer the appeal to a law specialist for consideration and advice prior to acting on the appeal if any of the following punishments have been imposed:

- (1) Arrest in quarters for more than seven days;
- (2) Correctional custody for more than seven days;
- (3) Forfeiture of more than seven days pay;
- (4) Reduction from pay grade E-4 or higher;
- (5) Extra duties for more than 14 days; or,
- (6) Restriction for more than 14 days.

The reviewing law specialist is not limited to an examination of the written material that comprises the record of proceedings and may make such additional inquiry as necessary to resolve all issues.

1.F.6.c. Action That May Be Taken on Appeal

The officer acting on an appeal may exercise the same powers with respect to the punishment imposed as may be exercised by the officer who imposed the punishment or his or her successor in command. The superior officer may take this action even if no appeal has been filed. Under no circumstances may the superior official increase the punishment in either quality or quantity of punishment.

1.F.6.d. Notification

Upon completion of the action by the appeal authority, the member and the commanding officer imposing the punishment and any intermediate commanding officers shall be promptly notified of the results of the appeal.

1.F.6.e. Effective Date of Punishment That Has Been Deferred

(1) Members Assigned to Shore Units.

A punishment that has been deferred pending the decision of an appeal shall take effect on the date the member's commanding officer is advised of the appeal decision.

(2) Members Attached to or Embarked in a Vessel.

In the case of punishment imposed upon a member on a vessel and deferred pending resolution of an appeal, unless the appeal authority directs otherwise, the deferred punishment shall remain deferred until arrival of the vessel in port. The commanding officer of a vessel has the discretion to determine whether "arrival of the vessel in port" occurs at a brief stop or port call lasting only a few days or at the end of the current deployment and return to homeport.

1.F.6.f. Attachments to the NJP Punishment Log

Final action on a member's appeal shall be attached to the NJP package in the unit punishment log and a copy provided to the member.

1.G. ADMINISTRATIVE MATTERS RELATED TO NJP

1.G.1. Administrative Measures Independent of Article 15, UCMJ

1.G.1.a. General

Commanding officers are authorized and expected to use administrative corrective measures to further the efficiency of their commands or units. These measures are not to be imposed as punishment for any military offense(s). They may be administered either orally or in writing. A non-exhaustive list of administrative corrective measures generally fall into three areas: extra military instruction, administrative withholding of privileges, and nonpunitive censure. [See, RCM 306(c)(2), MCM.]

1.G.1.b. Extra Military Instruction [EMI]

(1) EMI is defined as instruction in a phase of military duty in which an individual is deficient. It is intended for, and directed towards, the correction of that deficiency. It is a legitimate training technique to be used for improving the efficiency of an individual within a command or unit through the correction of some deficiency in that individual's performance of duty. EMI may be assigned only if genuinely intended to ac-

compish that result. It is not to be used as a substitute for judicial (court-martial) punishment or nonjudicial punishment [NJP], and must be logically related to the deficiency in performance for which it was assigned. EMI shall be conducted within the following limitations:

(a) EMI normally will not be conducted for more than two hours per day.

(b) EMI, if awarded, or approved by the commanding officer may be conducted at a reasonable time outside normal working hours.

(c) EMI will not be conducted over a period that is longer than necessary to correct the performance deficiency for which it was assigned.

(d) EMI will not be performed on the member's Sabbath.

(e) EMI will not be used to deprive the member of normal liberty to which the member is otherwise entitled. EMI may be directed to occur outside of normal work hours, however, and such scheduling may incidentally limit a member's liberty by the time required to perform the EMI. A member who is otherwise entitled to liberty may commence normal liberty upon completion of EMI.

(f) Authority to assign EMI, which is to be *performed during normal working hours*, is not limited to any particular grade or rate, but is an inherent part of that authority over their subordinates that is vested in officers and petty officers in connection with duties and responsibilities assigned to them. This authority to assign EMI that is to be performed during normal working hours may be withdrawn by any superior if warranted.

(g) Authority to assign EMI to be *performed after normal working hours* is vested in the commanding officer. Such authority may be delegated, as appropriate, to subordinate officers and petty officers, in connection with duties and responsibilities assigned to them, but EMI may be assigned under such circumstance only with the knowledge and prior approval of the commanding officer.

(2) EMI is intended to correct a deficiency and, as such, an individual deemed by the command to be qualified must supervise the performance of EMI. EMI may be ordered to coincide with an appropriate supervisor's work or duty schedule during reasonable hours.

(3) EMI should not normally be ordered for a period exceeding fourteen sessions and if not on consecutive days, to exceed one month in total period of time before completed. If the deficiency is not correctable within the training provided under these limitations, alternative actions should be considered; *e.g.*, performance probation, etc.

(4) EMI is solely intended to correct a deficiency. It is automatically terminated at the end of its ordered period and is terminated sooner if the EMI supervisor determines the deficiency has been corrected.

(5) EMI is not normally considered appropriate for E-7 or above.

(6) EMI is not to be confused with the punishment of extra duties that may be awarded at NJP or hard labor without confinement awarded at a court-martial. While menial labor may be awarded as a punishment, it is not appropriate for EMI. The tasks and/or training ordered to be performed as EMI must relate to and have the logical purpose of correcting the appropriate deficiency. If EMI takes the form of on-the-job training, a qualified supervisor must be available to answer questions and inspect the task or work accomplished to ensure the training objectives are achieved. That supervisor is authorized to terminate the EMI once the training objectives have been accomplished.

1.G.1.c. Administrative Withholding of Privileges

(1) A privilege is a benefit, advantage, or favor provided for the convenience or enjoyment of an individual. Examples of privileges that may be temporarily withheld as administrative corrective measures are: special liberty; scheduling of leave during a particular period (but note: reasonable opportunity to take annual leave may not be denied); exchange of duty; participation in special command programs; access to base or ship libraries, base or ship movies, or enlisted or officers' clubs; base parking; and base or ship special services events. It may also encompass the withholding of special pay as well as commissary and exchange privileges, provided such withholding complies with applicable rules and regulations, and is otherwise in accordance with law. In all instances, unless properly delegated, final authority to withhold a privilege, however temporary, must ultimately rest with the level of authority empowered to grant the privilege.

(2) Deprivation of normal liberty as a punishment, except as specifically authorized under the UCMJ, is illegal. Therefore, except as the specific result of a punishment imposed under Article 15, UCMJ, or as the result of the sentence of a court-martial, it is illegal for any officer or petty officer to deny any subordinate normal liberty, or privileges incident thereto, as *punishment* for any offense. Lawful deprivation of normal liberty may result, however, from other lawful actions (*e.g.*, authorized pretrial restraint; deprivation of normal liberty in a foreign country or in foreign territorial waters, when such action is deemed essential for the protection of foreign relations of the United States). Furthermore, reasonable conditions may be placed on liberty without the restriction resulting in punishment. For example a commanding officer of a vessel during a port-call may restrict members from renting motorcycles and mopeds, place certain facilities off-limits, or prohibit certain food or drink products as may be reasonably required for the health and well-being of the crew or the conduct of foreign relations. Advice may always be sought from the servicing legal office.

(3) It is necessary to the efficiency of the Coast Guard that official functions be performed and that certain work be accomplished in a timely manner. It is,

therefore, not a punishment when members in the Coast Guard are required to remain on board and be physically present outside of normal working hours for work assignments that should have been completed during normal working hours, or for the accomplishment of additional essential work, or to achieve the currently required level of operational readiness.

(4) The incidental loss of liberty due to the performance of authorized EMI after hours [*see*, subparagraph 1.G.1.b above] is not considered punishment.

1.G.1.d. Administrative Letters of Censure

Nonpunitive administrative letters of censure are not punitive and may be administered either orally or in writing. Nonpunitive letters of censure are private in nature and, other than administrative letters of censure issued by the Commandant, shall not be forwarded to the Chief of Personnel, quoted in, or appended to, performance reports, included as enclosures to investigative reports, or otherwise included in official Coast Guard records of the recipient. [*See*, Article 8.E.4., Coast Guard Personnel Manual, COMDTINST M1000.6 (series).]

1.G.2. Conduct Marks

1.G.2.a. General

Rules governing conduct marks are properly a subject of administrative regulation. [*See*, Article 10.B., Coast Guard Personnel Manual, COMDTINST M1000.6 (series).]

1.G.2.b. Policy

A low conduct mark is not a punishment for an offense, and should not be used as such. A low conduct mark merely reflects that the member has committed an offense. It is the offense (or more specifically, the wrongful conduct underlying the offense), not the holding of a disciplinary proceeding (such as the NJP or court-martial), that is the basis for the low conduct mark. It rests with the sound discretion of the marking officials to determine appropriate conduct marks.

1.G.2.c. Good Conduct Medal

To determine the effect of NJP upon a member's qualifications to receive the Good Conduct Medal, see Article 5.B.1.b.(3)(c), Medals and Awards Manual, COMDTINST M1650.25 (series).

1.G.3. Personnel Record Entries

1.G.3.a. Court Memorandum (Form CG-3304)

The Court Memorandum provides input to the service records of officer and enlisted personnel for all masts resulting in the imposition of punishment. If mast was held, but no

punishment as described under Article 15, UCMJ, was awarded, then Article 15 punishment (or NJP) was not awarded. No Court Memoranda shall be prepared if, instead of imposing punishment, the matter is dismissed, dismissed with a warning, dismissed with administrative action taken, referred to court-martial, or results in recommendation for general court-martial because these actions are not considered the imposition of punishment. [See, section 2.E. of the Source Data Automation (SDA) II User Manual, HRSICINST M5231.2 (series).]

1.G.3.b. Reduction in Pay Grade

Personnel record entries are required by section 2.E of the Source Data Automation (SDA) II User Manual, HRSICINST M5231.2 (series) and Article 5.C.38., Coast Guard Personnel Manual, COMDTINST M1000.6 (series) when reduction in pay grade is awarded under Article 15, UCMJ, or court-martial.

1.G.3.c. Reserve Personnel

Personnel actions regarding reserve personnel shall be entered into the Personnel Management Information System by the Personnel Reporting Unit (PERSRU) that maintains the reservist's records. Accordingly, one copy of each CG-4910 documenting the imposition of NJP on reserve personnel shall be sent to the PERSRU that maintains the reservist's records.

1.G.3.d. Excused Absences

In an absence case, excusing a member's absence does not necessarily amount to a determination that the absence was unavoidable or that the time lost is not deductible. This is a separate administrative determination and the command is not limited in taking administrative action based upon the results of a hearing under Article 15, UCMJ. [See, Military Personnel Data Records (PDR) System, COMDTINST M1080.10 (series).]

1.G.4. Unit Punishment Log (or Unit Punishment Book)

A unit punishment log (book) shall be maintained at every unit authorized to award punishment under Article 15, UCMJ. When final action has been taken on the CG-4910, the "Final Administrative Action" section of form CG-4910 shall be appropriately completed and the form and associated mast documentation, including investigation package, final action on appeal, etc., shall be filed in the unit punishment book. These forms and supporting documents shall be retained at the unit for four years.

1.H. NJP WITHOUT A HEARING

1.H.1. Member Afforded the Rights of a Party

1.H.1.a. General

Punishment under Article 15, UCMJ may be imposed on the basis of the record of a court of inquiry or an investigative body in which proceedings the member was afforded the rights of a party with respect to the offense(s) for which punishment is contemplated [*see*, Administrative Investigations Manual, COMDTINST M5830.1 (series)]. The report of investigation or of the court of inquiry must have recorded that the member being punished was afforded the rights of a party. A member has been “afforded” these rights when he or she has been advised of them, when he or she understands them, and when he or she has either exercised these rights or knowingly and voluntarily waived them (or some of them).

1.H.1.b. Consult Servicing Legal Office

A commanding officer considering imposing NJP based on this section should consult his or her servicing legal office prior to doing so.

1.H.1.c. Procedure

The commanding officer may direct the appearance of the member before imposing NJP, but need not do so. Whether or not the member appears before the commanding officer before punishment is imposed, the member must be advised in writing of the right to demand trial by court-martial in lieu of NJP, if appropriate, and of the right to appeal.

1.H.1.d. Referral to Superior Commanding Officer

If the commanding officer lacks the authority to impose what he or she considers to be appropriate punishment, the commanding officer will refer the report of the investigative body or court of inquiry to the next superior officer in the chain of command. That officer may then impose punishment under Article 15, UCMJ with or without the personal appearance of the member. The member must be advised of the right to demand trial by court-martial in lieu of NJP, if appropriate, and of the right to appeal. The senior commanding officer has all the options available to him or her (*i.e.*, dismiss the case, address the matter through administrative measures, address the matter at NJP, refer the matter to court-martial, etc.).

1.H.1.e. Investigation From Prior Unit

In some instances, the report of a court of inquiry or investigative body may not be finalized until after a member has been transferred from his or her prior unit to a new unit. If that member was a party to the court of inquiry or investigative body, he or she is considered to be “of the command” of the prior unit even though transferred to a new unit before such a report was finalized or NJP imposed. The commanding officer who had jurisdiction when the member became a party shall retain jurisdiction for purposes of is-

suing a punitive letter under Article 15, UCMJ. [*See*, subparagraph 1.E.2.a above.] Although a party is considered to be “of the command” of the prior unit, the determination of whether that party is attached to or embarked in a vessel, for the purpose of demanding trial by court-martial in lieu of NJP, is based on the party’s actual unit at the time the punitive letter is issued.

1.H.2. Member Not Afforded the Rights of a Party

If punishment under Article 15, UCMJ is contemplated in view of the facts developed at an investigative body or court of inquiry before which the member was not a party, he or she can be punished only after holding mast (a hearing) or, in the alternative, only after the record of the investigative body or court of inquiry has been returned and additional proceedings held to afford the member the rights of a party.

1.I. SUBSEQUENT COURT-MARTIAL FOR OFFENSE PUNISHED AT NJP

NJP is not a bar to a subsequent court-martial for a serious offense or pattern of offenses that grew out of the same act or omission and that is not properly punished under Article 15, UCMJ. If a member is punished under Article 15, UCMJ and is later sentenced at court-martial for the same offense, the member may present the prior punishment as a fact in mitigation at the court-martial [*see*, RCM 1001(c)(1)(B)], and, if presented, the sentencing authority must consider the prior punishment under Article 15, UCMJ when determining the court-martial sentence.